

A learned and necessary C  
**ARGUMENT**

To prove that each Subject hath  
a Propriety in his Goods.

*Shewing also*  
The extent of the Kings Prero-  
gative in Impositions upon the  
Goods of Merchants exported and  
imported, out of and into this  
Kingdome.

Together with a Remonstrance presented  
to the Kings most excellent Majesty, by  
the honourable House of Commons, in  
the Parliament holden *Anno Dom.*

1610. *Anno<sup>3</sup> Regis*  
*Jacobi, 7.*

*La*

---

By a late reverend and learned Judge  
of this Kingdome.

---

L O N D O N,  
Printed for *Iohn Burroughes*, and are to be sold a  
his shop at the signe of the Golden Dragon  
neare the Inner Temple gate in  
Fleetstreet, 1641.

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A learned and necessary

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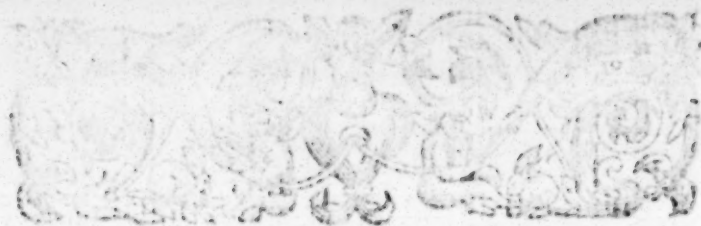
## To the Courteous Reader.

**T**His excellent Treatise of the no lesse worthy Author, happily falling into my hands, I instantly thought it my duty to make that publick, which had given so much usefull satisfaction to many learned, and judicious, in private; remembering that Rule, *Bonum quod communius, eò melius.*

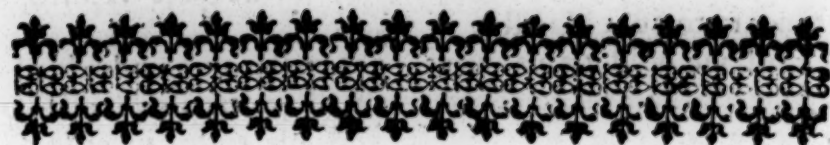
My hopes are, that besides the consideration of its owne worth to men of candid judgement, the authority by which it is countenanced, will aloud proclaim its desert: In which respect I conceive it altogether needlesse to commend either the Treatise, its use, the Author, or the pure stile: Such additions to things worthy, are probably Detractions.

Thine ; desirous of the  
Common good,

I. B.



THE  
COMMON  
GOD  
A. M.



A

Remonstrance delivered to his Majesty in writing, after the inhibition given by him to the Commons house of Parliament, as well by word of mouth, as by letters, not to proceed in the examining his right to impose without assent of  
PARLIAMENT.

To the Kings most excellent Majesty.

*Most gracious Sovereigne,*

**V** Hereas we your Majesties most humble Subjects, the Commons assembled in Parliament, have received first by message, and since by speech from your Majesty a command of restraint, from debating in Parliament your Majesties right of imposing upon your subjects goods exported, or imported out of, or into this Realme: yet allowing us to examine the greivance of these impositions in regard of quantity, time, and other Circumstances of disproportion thereto incident: We your said humble Subjects nothing doubting but that your Majesty had no intent by that Command to infringe, the ancient and fundamentall right of the Liberty of Parliament in point of exact discussing of all matters concerning them, and their possessions, goods and rights whatsoever, which yet we cannot but conceive to be done in effect by this com-  
B mand,

mand, doe with all humble duty make this Remon-  
strance unto your Majesty.

Frist, we hold it an ancient, generall, and undoubted  
right of Parliament, to debate freely all matters which doe  
properly concerne the subject, and his right or estate;  
which freedome of debate being once fore-closed, the  
essence of the liberty of Parliament is withall dissol-  
ved.

And whereas in this case the subjects right on the one  
side, and your Majesties prerogative on the other, cannot  
possibly bee severed in debate of either; Wee alledge  
that your Majesties Prerogatives of that kinde con-  
cerning directly the subjects right and interest, are  
daily handled and discussed in all Courts at West-  
minster, and have been ever freely debated upon all  
fit occasions, both in this and all other former Parlia-  
ments, without restraint; which being forbidden, it is im-  
possible for the subject, either to know, or to maintaine his  
right and propriety to his owne lands and goods, though ne-  
ver so just and manifest.

It may further please your most excellent Majesty to  
understand, that wee have no minde to impugne, but a  
desire to informe our selves of your Highnesse Proroga-  
tive in that point, which (if ever) is now most neces-  
sary to be knowne; and though it were to no other pur-  
pose, yet to satisfie the generalitie of your Majesties Sub-  
jects, who finding themselves much grieved by these  
new impositions, doe languish in much sorrow and dis-  
comfort.

These reasons ( Dread Sovereigne ) being the proper  
reasons of Parliament, doe plead for the upholding of  
this our ancient Right and Libertie. Howbeit seeing it  
hath pleased your Majestie to insist upon that judge-  
ment in the Exchequer, as being direction sufficient for  
us without further examination: Upon great desire of  
leaving your Majesty unsatisfied in no one point of our in-  
tents



tents and proceedings, We professe touching that judgement, that wee neither doe nor will take upon us to reverse it; but our desire is to know the reasons whereupon the same was grounded; and the rather for that a generall conceit is had, That the reasons of that judgement may bee extended much further, even to the utter ruine of the ancient liberty of this Kingdome; and of your subjects right of proprietie to their goods and lands

Then for the judgement it selfe, being the first and last that ever was given in that kind (for ought appearing unto us,) and being onely in one Case, and against one man, it can binde in law no other, but that person; and is also reverfible by Writ of errour granted heretofore by act of Parliament. And neither he nor any other subject is debarred by it, from trying his right in the same or like case, in any of your Majesties Courts of Record at Westminster.

Lastly, we nothing doubt, but our intended proceeding in a full examination of the right, nature, and measure of these new impositions (if this restraint had not come betweene) should have been so orderly and so moderately carried and employed to the manifold necessities of these times, and given your Majesty so true a view of the state and right of your subjects, that it would have been much to your Majesties content and satisfaction, (which wee most desire,) and removed all causes of feares and jealousies from the loyall hearts of your Subjects, which is (as it ought to bee) our carefull endeavour: whereas contrariwise in that other way directed by your Majestic, wee cannot safely proceede without concluding for ever the right of the subject, which without due examination thereof wee may not doe.

Wee therefore your loyall and dutifull Commons, not swarving from the approved steps of our Ancestours, most

(4)

humbly and instantly beseech your gracious Majestie, that without offence to the same, we may, according to the undoubted right and liberty of Parliament, proceede in our intended course of a full examination of these new impositions: That so wee may cheerefully passe on to your Majesties businesse, from which this stop hath by diversion so long withheld us. And we your Majesties most humble, faichfull, and loyall Subjects, shall ever ( according to our bounden duty ) pray for your Majesties long and happy reigne over us.

The



*The question is, whether the King, without assent of Parliament, may set impositions upon the wares, and goods of merchants exported, and imported, out, of, and into, this Realme.*

**T**hree things have been debated in this Parliament, that have much concerned the right of our whole Nation, of which every one of them hath exceeded the other by a gradation in waight and moment.

The first, was the change of our name, which was a point of honour, wherein we shewed our selves not willing to leave that name, by which our ancestors made our Nation famous: yet have we lost it, saving onely in those cases where our ancient and faithfull protector, the Common Law doth reteine it.

The name of Britaine not admitted in legal proceedings.

The second was the union; a question of greater moment, for that concerned the freehold of our whole Nation, not in so high a point as having, or not having; but in point of Division & participation, that is, whether we should enjoy the benefits, and liberties of the kingdome our selves onely as we and our ancestors have done, or admit our neighbour Nation to have equall right in them, and so make our owne part the lesse, by how much the greater number should be among whom the Division was to be made. This was adjudged against us both Legally and solemnly, and therefore in that we rest, hoping of that effect of this judgement which we read of in the Poet:

Coke li. 7.  
Calvins case.

*Tros Tyrinsque mihi nullo discrimine habetur.*

Virgil  
Æneid. li. 1.  
Dido's  
speech to  
Æneas.

The third is the question now in hand, which exceedeth the other two in importance and consequence, concerning



the whole kingdome, for it is a question of our very essence, not what we shall be called, nor how we shall divide that we have, but whether we shall have any thing or nothing: for if there be a right in the King to alter the property of that which is ours without our consents, we are but tenants at his will of that which we have. If it be in the King and Parliament: Then have we propertie, and are tenants at our owne will: for that which is done in Parliament is done by all our wills and consents. And this is the very state of the question which is proposed, that is, whether the King may impose without consent of Parliament.

Impositions are of two natures, *Forreine* and *Intestine*.

*Intestine* be those, which are raised within our land in the commerce and dealing that is at home within our selves, and may aswell for that reason be so called, as for that *vescuntur intestinis Reipublice*, They are fed, and nourished with the consuming and waiting of the entralls of the Common wealth. Against these I neede not to speake; for the Kings learned Counsell have with great honour and conscience in full Councell acknowledged them to be against the law.

Therefore I will apply my selfe to speake of impositions *forreine*, being the single question now in hand, and maintained on the Kings behalfe with great art and eloquence.

The inconvenience of these impositions to the Commonwealth, that is, how hurtfull they are to the Merchants, in impoverishing them in their estates; to the King in the increasing of his revenues by decay of traffique, and to the whole people in making all commodities excessive deare, is confessed by all; and therefore need no debate. The point of right is now only in question, and of that I will speak with conscience and integrity, rather desirous that the truth may be knowne, and right be done, than that the opinion of my selfe, or any other may prevaile.

The occasion of this question was given by the book of rates lately set out, affronted with the copy of Letters Patents, dated *July 28. 6. Jac.* In which book, besides the rates,



rates, is set downe upon every kinde of merchandise, exported and imported, for the true answering of subsidy to the King, according to the Statute of tonnage and poundage. In the first yeare of his reigne there is an addition of impositions upon all those kinde of wares, which within the book are expressed, and the rate of the imposition as high, and in some cases higher, than the rate of the subsidy: And this declared to be by authority of those Letters Patents. Heare upon considering with my selfe, that heretofore the setting on of one only imposition without assent of Parliament, upon some one kinde of merchandise, and that for a small time, and upon urgent necessity of actuall warre, did so affect our whole Nation, and especially the great Councell of the Parliament, being the representative body of the whole Common-wealth; that neither the sunne did shine, nor the rivers runne their courses, untill it was taken off by the publick judgement of the whole State. I thought it concerned me, and other members of that Councell, that were no lesse trusted for our countreys, than those in former times, and have their actions to guide and direct us, to have the same care they had in preserving the right, and liberties of the people, having now more cause then they had, for that the impositions, now set on without assent of Parliament, are not upon one or two speciall kindes of goods, but almost indefinite upon all, and doe extend to the number of many hundreds, as appeareth by that printed book of rates, and are set in charge upon the whole kingdome, as an inheritance to continue to the King, his heires and successours for ever: which limitation of estate in matter of impositions was never heard of, nor read of before as I conceive.

The inducements expressed in these Letters Patents are much upon point of State, and with reference to the rights and practise of forraigne princes; For this I will not take upon me to enter into the consideration of such great mysteries of policie, and government. but will only put you in minde of that I observe out of *Tit. Livius* the Romane Historiographer: *Omnem divini, humanique moris memoriam abolemus.* Tit. Liv. l. 2.

*abolemus, cum novâ peregrinâque patriâ, & priscis præferimus.*

To that which hath been spoken for the Kings Prerogative, I will give answer to so much of it, as I may conveniently in my passage through this debate: wherein I will principally endeavour to give satisfaction to such new objections, as were made by the worthie and learned Counselor of the King that spake last, in maintenance of his Maiesties Prerogative.

Pat. Iuly  
28. Iac. 6.

The case intermes is this: The King by his Letters Patents before recited hath ordained, willed, and commanded that these new impositions contained in that booke of rates shalbe for ever hereafter payd unto him, his heires, and successors, upon paine of his displeasure: Herevpon the question ariseth whether by this Edict and Ordinance so made by the King himselfe, by his Letters Patents of his owne will and power absolute, without assent of Parliament, he be so lawfully intituled to that he doth impose, as that thereby he doth alter the property of his subjects goods, and is enabled to recover these impositions by course of Law.

I think he cannot; and I ground my opinion upon these foure reasons.

1 It is against the naturall frame and constitution of the policie of this kingdome, which is *jus publicum regni*, and so subverteth the fundamentall Law of the Realme, and induceth a new forme of state and goverment.

2 It is against the municipall Law of the Land, which is *jus privatum*, the Law of property and of private right.

3 It is against Divers statutes made to restraine our King in this point.

4 It is against the practice and action of our Common wealth, *contra morem majorum*; and this is the modestest rule to limit both Kings Prerogatives, and subiects liberties.

Upon the first, and fourth of these foure principall grounds I will more insist then upon the second and third, both for that in their owne nature they are a more proper matter for a Councell of State, to the judgement of which I apply my discourse (and they have not beene enforced by others:) As also for that the other two (as more fit for a barre, and the

the Courts of ordinary justice) have by some professors of the Law beene already most learnedly, and exquisitely discussed.

For the first: it will be admitted for a rule, and ground of State, that in every Common-wealth and government, there be some rights of Sovereignty, *jura Majestatis*, which regularly, and of common right doe belong to the Sovereign power of that State; unlesse Custome, or the provisionall ordinance of that State doe otherwise dispose of them: which Sovereign power is *potesas suprema*, a power that can controule all other powers, and cannot be controuled but by it selfe.

It will not be denied, that the power of imposing hath so great a trust in it, by reason of the mischiefes may grow to the Common-wealth by the abuses of it, that it hath ever beene ranked among those rights of Sovereign power.

Then is there no further question to be made, but to examine, where the Sovereign power is in this Kingdome; for there is the right of imposition?

The Sovereign power is agreed to be in the King: but in the King is a twofold power; the one in Parliament, as he is assisted with the consent of the whole State; the other out of Parliament, as he is sole, and singular guided merely by his owne will. And if of these two powers in the King one is greater than the other, and can direct and controule the other; that is, *Suprema Potesas*, the Sovereign Power, and the other is *subordinata*.

It will then be easily proved, that the power of the King in Parliament is greater than his power out of Parliament, and doth rule and controule it; for if the King make a grant by his Letters Patents out of Parliament, it bindeth him and his successours, he cannot revoke it, nor any of his successours; But by his power in Parliament he may defeat and avoyd it; and therefore that is the greater power.

If a judgement be given in the Kings Bench, by the King himselfe (as may be, and by the Law is intended) a writ of Error, to reverse this judgement, may be sued before the King in Parliament, which writ must be granted by the

C

Chancellor,



1 H. 7. 19. 6

Lib. intrac.  
fol. 302. c. 1.The book  
is not so,  
that the  
Cōmons  
should  
meddle.

Chancellor, upon bill indorsed by the King himselfe, as the book is 1 H. 7. 19. 6. And the forme of the writ of Error is, that it being directed to the Chiefe Justice of the Kings Bench, *Quia in recordo & processu, ac etiam in redditione iudicii loquela, qua fuit in Curia nostra coram nobis, Error intervenit manifestus ad grave damnum, &c. Nos errorem (si quis fuerit) modo debite corrigi, & partibus predictis plenam & celerem justitiam fieri volentes, in hac parte vobis mandamus, quod Recordum & processum loquela illius cum omnibus ea tangentibus, in prasens Parliamentum nostrum sub sigillo tuo distincte & aperte mittas, & hoc breve, ut inspectis, &c. nos de Consilio & advisamento Dominorum spiritualium & temporalium, ac Communitatis in Parlamento nostro predicto existentis, ulterius pro errore illa corrigendo fieri faciamus quod de jure & secundum legem & consuetudinem Regni nostri Anglia fuerit faciendum.* So you see the Appeale is from the King out of the Parliament, to the King in Parliament; the writ is in his name; the rectifying and correcting the errours is by him, but with the assent of the Lords, and Commons, than which there can be no stronger evidence to prove, that his power out of Parliament is subordinate to his power in Parliament; for in Acts of Parliament, be they laws, grounds, or whatsoever else, the Act and power is the Kings, but with the assent of the Lords and Commons, which maketh it the most soveraigne and supream power above all, and controulable by none. Besides this right of imposing, there be others in the Kingdome of the same nature: As the power to make lawes; the power of Naturalization; the power of erection of arbitrary government; the power to judge without appeale; the power to legitimate: all which doe belong to the King only in Parliament. Others there be of the same nature, that the King may exercise out of Parliament, which right is growne unto him in them, more in those others by the use and practise of the Common-wealth: as denization, coynage, making warre: which power the King hath time out of minde practised, without the gain-saying and murmuring of his subjects: But these other powers before mentioned have ever beene executed



executed by him in Parliament, and not otherwise; but with the reluctance of the whole Kingdome.

Can any man give me a reason, why the King can only in Parliament make lawes? No man ever read any law, whereby it was so ordained; and yet no man ever read that any King practised the contrary: Therefore it is the originall right of the Kingdome, and the very naturall constitution of our State and policy, being one of the highest rights of soveraigne power: So it is in naturalization, legitimation; and the rest of that sort before recited.

It hath been alleaged that those which in this Cause have enforced their reasons from this Maxime of ours (*That the King cannot alter the Law*) have diverted from the question.

I say under favor they have not; for that in effect is the very question now in hand; for if he alone out of Parliament may impose, he altereth the Law of England in one of these two maine fundamentall points. He must either take his Subjects goods from them, without assent of the party, which is against the Law; or else he must give his owne Letters Pattents, the force of a Law, to alter the property of his subjects goods, which is also against the Law.

That the King of England cannot take his subjects goods, without their consent, it need not be proved more then a principall; it is *jus indigena* an old homeborne right, declared to be Law by divers statutes of the Realme: As in 34. E. 3. cap. 2. That no office of the Kings, or of his heires, shall take any goods of any manner of person without the assent and good will of the party, to whom the goods belonged. The same is declared in many other statutes made against prisages and purveyances. Neither have ever any Kings attempted to go plainly & directly against that right; but have devised certaine legall colours and shadowes for their wrongfull doing in that kind, which I doe find were of three sorts: by way of Commission; by way of Loan; by way of Benevolence. Commissions of al other were the most insolent; for they went out (as it were by authority to levy ayd of the people upon great necessity of the Commonwealth) These were condemned in Parliament 21. E. 3.

34. E. 3. c. 2.

Commissions,  
Loans  
or Privie  
Seales, Benevolence

That is,  
the Parlia-  
ment.

*Num. 16.* upon a greivous complaint made of the use of them by the Commons, unto the King in Parliament: wherein the people doe pray the King, that he would be pleased to remember how at the parliament held the 17. year of his raig, and at the last Parliament, it was then accorded, and granted by their said Lord the King and his counsell, that there should goe out no commissions out of chauncery for hobbeleries, Archers, and other charges to be levied upon the people, if they were not granted in Parliament; which ordinances were not observed; by reason whereof, the people were impoverished and decayed, for which they prayed the King that he would be pleased to take pity of his people, and the ordinances and grants made to his people in Parliament to affirme and hold; And that if such Commissions goe out without assent of Parliament, that the Commons, which are grieved thereby, may have writs of *superfedeas*, according to the said Ordinance, and that the people be not bound to obey them.

To this the Kings answer is:

*Si ul tiel imposition fuit fait per grand necessitie, & ceo del assent des Prelates, Countes, Barons, & aut grandes & au-  
somes des Commons adonq, presents, Neant mains nostre Seig-  
nior le Roy ne voet que tiel imposition non duement fait, soit  
treit in consequence, eins voet que les ordinannices dont cest  
petition fait mention soit bienment gardes.*

Stowes an-  
na's.  
17. H. 8.

The latest time that ever King attempted that course of exaction was 17. H. 8. upon the taking of the French King at *Pavie*, by the forces of *Charles* the fifth: *Cardinall Wolsey* having a purpose to put the King into a warre, about that quarrell, and finding his cophers empty, advised this way, to send out Commissions, and by them to lewie ayd of the people; according to the value of their estate; But this gave such discontent to the whole Realme, that it caused in many places an actuall rebellion; and the *Cardinall* being called to give an account of this bad advice, did justifie this fact by the example of *Ioseph*, who advised *Pharaoh*

to take the fifth part of his subjects goods: But when hee saw that would not serve the turne, he falsely laid it upon the Judges, informing the King, he did it by their advice, being resolved by them of the lawfulnessse of the fact. So you see that great Churchmen found more safety in matter of government of our Common-wealth, in making a false report of a point of the Common-law, than in a true text of the Scripture. And if any Churchmen will endeavour by application of the text of Scripture, to overthrow the ancient lawes, and liberties of the Kingdome, I would advise them to be admonished by the ill successe of the Cardinall, in this particular action, and by the miserable catastrophe of his whole life and fortunes.

Loanes, and apprests were those, which we call Privie Seales, which though they were more moderate in shew, yet being made against the good will of the parties, were as injurious indeed as the other. The Commons in Parliament, 25. E. 3. Num. 16. made a grievous complaint to the King against the use of them, and prayed, that none from thenceforth should be compelled to make loans against their will, and they gave this reason in their petition: for that it is against reason, and the franchise of the land, and prayed that restitution might bee made, to those that have made such loanes.

Loans and  
Privie  
Seales,

Rot. par.  
25. E. 3.  
num. 16.

To this the Kings rescript was; *It pleaseth our Lord the King, it be so.*

Lastly, came in those kinde of exactions, which were termed by the faire name of *Benevolences*; but they became so odious, as they gave the occasion of a good law to bee made against themselves, and against all other shifts, and devices, by what new termes soever imposed upon the subjects: the Law is 1. R. 3. cap. 2. and is thus: The King remembering how the Commons of this his Realme, by new and unlawfull inventions, and inordinate covetise, against the law of this Realme, have beene put to great servitude, and important charges and exactions, and especially by a new imposition called a Benevolence, enacteth by the advice &c. That the Subjects and Commons of this land from

Benevo-  
lence.

1 R. 3. c. 2.



henceforth shall in no wise be charged by any such charges, or impositions called a Benevolence, nor by such like thing.

But if you will deny, that the King doth in this case take the goods of his subject without his assent, then you must fall upon mine other alternative proposition; That the Kings Patent hath in this case the power of a law, to alter property: for how can he recover the imposed by a legall course of proceeding, and by judgement in his Court, but upon a title precedent him, before the action brought, which title must bee a property in the same imposed? and how cometh he by that property, but by his owne Letters Patents, by which he declareth he will have that same as an imposition? For the judgement giveth not the right, but only doth manifest and declare it, and giveth execution of it: So in this point, the question is, whether the Kings Patent hath the force and power of the Law, or not: for if it bee not maintained that it hath, it can never be concluded, that he can transferre the property of his subjects goods to himselfe, without the assent of them; for *quod meum est, sine facto meo alterius fieri non potest*. And if you give this power to the Kings Patent, you subject the law, and take away all rules and bounds of settled government, and leave in the subject no property of his owne, neither doe you by this advance the Kings power and prerogative, but you make him no King; for as *Bracton* saith, *Rex est ubi dominatur lex, non voluntas*.

Bracton  
l. 1. c. 8.

So we see that the power of imposing, and power of making Lawes are *convertibilia & coincidentia*; and whosoever can doe the one, can doe the other; And this was the opinion of Sir *Iohn Fortescue* that reverend and honourable Judge, a very learned professor of the Common Law, and chiefe Justice of the Kings Bench, in the time of *Henry 6*. His words are these in his book, *De laudibus Legum Anglia cap. 9. Non Potest Rex Anglia ad libitum leges mutare regni sui; principatu namque nedum regali, sed & politico ipse dominatur: Si regali tantum praesset iis, leges mutare posset; tallagia quoque, & cetera onera imponere, ipsis inconsultis, quale dominium leges civiles indicant, cum dicunt quod principi placuerit,*

Fortescu  
de laudibus  
Leg. Ang.  
cap. 9.



*enerit, legis habet vigorem; sed longe aliter potest Rex politicis imperans, quia nec leges ipse sine subditorum assensu mutare poterit, nec Subjectum populum renitentem onerare peregrinis impositionibus.* In which place I must interpret unto you, that *peregrinae impositiones* be not strange and unheard of impositions, as was urged by the worthy gentleman that spake last; but impositions upon traffique into, and out of forraign Countreies, which is the very thing in question: further in the thirty sixth Chapter, he sayeth, of the King of England, *Neque Rex ibidem per se, aut ministros suos tallagia, Subsidia, aut alia quavis onera imponit ligetis suis, aut leges eorum mutat, vel novas condit, sine concessione vel assensu totius regni sui in Parlamento.* So he maketh these two powers of making Law, and imposing to be concomitant in the same hand, and that the one of them is not without the other; He giveth the same reason for this, as we doe now, but in other words, because (as he saith) in England it is *principatus mixtus, & politicus*, the King hath his Sovereigne power in Parliament, assisted and strengthened with the consents of the whole kingdome: and therefore these powers are to be exercised by him only in Parliament. In other Countreies they admit the ground of the Civil Law, *quod principi placuerit, legis habet vigorem*; Because they have an absolute power to make Law, they have also a power to impose, which hath the force of a Law in transferring property. *Philip Comyns*, that lived at that time, in his fourth booke the first chapter, the fifth booke, the eighth chapter, taketh notice of this policie of England, and commendeth it above all other States, as settled in most security: And further to our purpose layeth this ground, That a King cannot take one penny from his Subjects without their consent, but it is violence. And you may there note the mischiefs that grew to the kingdome of France, by the voluntary impositions first brought in by *Charles* the seventh, and ever since continued, and encreased to the utter impoverishment of the Common people, & the losse of their free Councell of three estates: And if this power of imposing were quietly settled in our Kings, considering what is the greatest use they make of assembling of Parliaments,

Fortescue  
de laud.

Leg. Ang.  
cap. 36.

Ph. Com.  
l. 4 cap. 1.  
l. 5. ca. 8.

liaments, which is the supply of money, I doe not see any likelihood to hope for often meetings in that kind; because they would provide themselves by that other meanes. And thus much for my first reason grounded upon the naturall constitution of the policie of our kingdome, and the publike right of our nation.

Cont. Law. 2. For the point of Common Law, which is my second Reason, it hath been well debated, and nothing left unspeaken that can be sayd in it; and therefore I will decline to speak of that, which other men have well discussed, and the rather, for that there is nothing in our Law-book directly, and in point of this matter; neither is the word (*imposition*) found in them, untill the case in my L. *Dier*, 1. *Eliz.* 165: for we shall finde this businesse of an higher strain, and alwayes handled elsewhere, as afterwards shall appeare: yet I will offer some answers to such objections, as have been made on the contrary in point of Common Law, and have not been much stood upon by others to be answered.

The objections that have been made are these; that from the first Book of the Law, to the last, no man ever read any thing against the Kings power of imposing; No judgement was ever given against it, in any of the Kings Courts at Westminster: Other points of prerogative as high as this, disputed and debated, his excesse in them limited, as in the book of 42. *Ass. pl.* 5. where the Judgestook away a Commission from one, that had power given by it to him under the great Seale, to take ones person, and to seise his goods before he was indicted. So Master *Scrogs* case, 1. & 2. *El. Dier.* 175. the power of the King in making a Commission to determine a question of right, depending between two parties notably debated, and ruled against the King, that hee could not grant it.

42. *Ass. pl.* 5.

1. & 2. *El.*  
*Dier.* 175.

To this I answer, that causes of this nature (of which the question now handled is) have ever been taken to be of that extraordinary consequence, in point of the Common right of the whole kingdome, that the State would never trust any of the Courts of ordinary justice with the deciding of them; but assumed the cognisance of them into the high Court of Parliament,

Parliament, as the fittest place to decide matters, so much concerning the whole body of the kingdome, As 2. Ed. 3. 7. it appeares, that Ed. 1. had granted a Charter to the men of great *Yarmouth*, that all the ships of Merchants, comming to the port of *Yarmouth*, should land their goods at their haven, and not at any other haven at that port, as at *Garneston*, and little *Yarmouth*, which were members of that port. This was very inconvenient for the Merchants, and a great hurt to traffique, and therefore the Charter was questioned in the time of Ed. 2. and adjudged good by the Counsell: but the parties not contented with this judgement, in the second yeer of King E. 3. by an order in Parliament made upon a petition there exhibited against this grant, brought a *Scire facias* out of the Chancery returnable in the kings bench, to question againe the lawfullnesse of the Patent, and in that suit, the cause was notably Debated, and those reasons much insisted upon that have been enforced in this case; As that of the Kings power in the custodie of the ports: But the matter so depending in the ordinary Court of justice, a Writ came out of the Parliament, and did adjourne it thither againe, where it gave occasion of a good Law to be made, to prevent the like grants, and to make them voyd notwithstanding any judgement given upon them, and to make such judgements also void. The Statute is, 9. E. 3. c. 1. And in the Parliament rolles, 2. H. 4. num. 109. we finde a notable record, which gives warrant for the proceeding in Parliament, in this manner as hath been in this Case, notwithstanding the judgement in the Exchequer, and declares to the Kingdome, that notwithstanding the great wonder made by some men, nothing hath been done in this businesse by those that serve in the Parliament, but in imitation of their worthy predecessors in the very like case. In the second yeere of H. 4. the Commons shew that in the time of R. 2. by the meanes of *John Waltham*, Bishop of *Salisbury*, Treasurer of England, wrongfully without authority of Parliament, and by reason of a judgement given in the Exchequer, 16. & 17. R. 2. by the Barons there against certaine Merchants of *Bristow*, and other places, passage had

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been

2. Ed. 3. 7.

9. E. 3. c. 1.  
every alien  
and deni-  
zen may  
carry his  
Merchan-  
dise where  
it pleased  
him, not-  
withstan-  
ding any  
Charter  
granted or  
judgment  
thereup-  
on.  
16. & 17.  
R. 2.



been taken for wines, otherwise than in ancient times had been, and therefore they prayed, they might pay their prise wines, in the manner they had used to pay, notwithstanding any judgement given in the Exchequer, or other ordinance made by the said Treasurer, contrary to the ancient usage; which petition the King granted, and the judgement thereupon became voyde, and the prise wine hath been paid contrary to the judgement ever since.

1. El. Dier  
165.

In 1. *El. Dier*. 165. upon the complaint, made by the Merchants, of the impositions set upon cloth by *Queene Mary* by her absolute power, without assent of Parliament; the cause was thought too weighty to be decided in any one Court; but (as it appeareth in the book) it was referred to all the Judges of *England*, who divers times had conference about it. So it may well be, there is nothing against it in our yeere books, for there is nothing of it.

39 E. 3. 12.

Another objection was this, which was made in the last argument, *viz.* That Custom is originally due by the common Law of *England*, It can then have no other ground or cause; but meerly by the Kings royall prerogative, as a right and duty originally belonging to his Crowne: which if it be, it must necessarily follow he may impose, for that is but the exercising of that right. To prove this was alledged the case 39. *E. 3.* 13. by which case it appeareth, that King *John* had a custome of eight pence on a tonn of wine in the part of South-hampton, but the book doth not tell you that the King had it by prerogative, and he might have it as well otherwise: as by prescription, or convention, which shall rather be intended, by reason of the certainty of the summe paid; for if it were by prerogative, he might take sometimes more, sometimes lesse at his will, the right being indefinite, and the quantity limitted onely by his owne Discretion. A common person may have such a custome certaine, as, 18. *El. Dier* 352. the Maior of *London* hath the twentieth part of salt brought into the City by Aliens, which is a great imposition, but is good by prescription originally and hath received greater strength since, by acts of Parliament made, for the confirmation of the liberties and customes

18. El. Di r  
352.

customs of the City of *London*. So it appeareth, that *John* of *Britaine* had Custome of the ships that arrived at his port of little *Tarmouth*, worth twenty pounds *per an.* And these instances doe inferre, that a Custome may bee otherwise then by prerogative, and therefore it is no good argument to conclude, the King had such a custome, Therefore he had it by prerogative. Dier 43.

The booke in 30. *H. 8.* Dier 43. was much pressed on this point, which sayeth that custome belonged to the King at Common Law, and doth instance in wooll, woll fells, and leather begun at the Common Law, but abridged by the Statute of 14. *E. 3. ca. 21. stat. 1.* but this appeareth to be a great errour, and mistaking in the booke; for we doe finde that that custome of woolls, wooll-fells, and Leather was begun by a grant in Parliament, as appeareth in statute 15. *E. 1. ca. 7.* the words be Granted to us by the Commonalty aforesaid, and the last mention before was that the King had granted to the Bishops, Earles, Barons, and all the Commonalty of land, &c. *Novem. 3. Ed. 1.* the King recited in his letters patents, That *Prelati magnates ac tota Communitas mercatorum Regni*, granted this new custome. And so the ground and motive of that opinion being false, all grounded upon that must needs be erroneous. 30. Hen. 8.  
Dier 43.  
14. Ed. 3. c.  
21. statn.

It was objected that the King holdeth at this day the encrease of foure pence in the pound, over due custome, payd by Merchants Aliens according to the purport of the *Charta mercatoria* 31. *E. 1.* by meere right, of prerogative at the Common Law; for by that grant of the Merchants he cannot hold it, they being no body politick at the time of the grant; and therefore the grant is meere voyd to binde in succession, And yet the Merchants Aliens doe pay it at this day. Rot. char.  
31. E. 1. m.  
44. in Turri

It is agreed, that by the Common-law a contract with a number not incorporate, bindeth not succession; but we must take notice, that they, by whom that grant was made, of the augmentation of Custome, by three pence in the pound, and other encreases, 31. *E. 1.* were

Merchants aliens, who by the law of Merchants, and Nations may contract to binde their successours in matters of traffique: for their contracts are not ruled by the Common law of the Land, but by the law of Nations, & *per legem Mercatoriam*, as the book case is, 13. Ed. 4. 10. and there was a good consideration given them by the King for this encrease of custome: as discharge of prise Wines for two shillings the Tonn, and other immunities, which all Merchants aliens hold and enjoy at this day, by force of that contract made 31. E. 1. For a stranger payeth now but two shillings the Tonn for prisage, whereas it standeth an English man in much more: so as the rule of commutative justice maketh the contract availeable to the King against the Merchants, because he parteth with part of his prisage to the Merchant, and maketh it availeable to the Merchant against the King, because he giveth him encrease of custome above that is due by law. But the statute of 27. E. 3. cap. 26. heretofore cited doth make this point cleare without scruple, which confirmeth the Charter of 31. E. 1. entirely, and by that the encrease of custome by three-pence in the pound, which is by name mentioned in the statute, is now due by act of Parliament.

27. E. 3. c. 26

If you will have the King hold this encrease of custome by Prerogative, you goe directly against his meaning; for it appeareth by that which presently followed this grant, that the King took this encrease of custome by way of contract only, and not by Prerogative; for the same yeare following he directeth his writs to the officers of his ports, reciting the contract made with the Aliens by *Charta Mercatoria*, adding further, that some Denizens were willing to pay the like custome, upon the same immunities to them to be granted, and doth assigne his officers to gather it, but with this clause, *Si grante & absque coersione solvere voluerint, ita quod aliquem Mercatorem de regno, & potestate nostrâ ad prastationes & custumas hujusmodi invito solvendas nullatenus distringatis.* Nothing can more plainly expresse, that the Kings inten-

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tion was not to demand this by way of Prerogative, but by force of the contract. If there were such a Prerogative in the Crowne as of right to have custome; how commeth it to passe, this Prerogative never yet had fruit or effect? for this I can maintaine, that the King of *England* hath not one penny custome, or imposition upon merchandizes elder than the fourth yeare of *Queen Mary*; that hee holdeth not by act of Parliament, and by the peoples grant: The eldest that he hath is that of wools, woollfells, and lether, and that is by act of Parliament, as appeareth in the Statute 25. E. 1. cap. 7. the tonnage and poundage by Parliament in the first yeare of every Kings reigne. 25. E. 1. 6. 7.

The Aliens encrease of custome by Parliament 27. E. 3. cap. 26. then this Prerogative hath been much neglected, that it was never called on to be put in execution, untill now of late yeares. 27. E. 3. cap. 27.

Concerning the statutes made for restraining our Kings, from the exercise of this pretended Prerogative, which is the third matter I stand upon: Those that have maintained the Kings Prerogative in this point, have endeavoured to interpret those statutes, to extend only to restraine him from imposing upon wool, woollfells, and lether, which are staple commodities: And the reason they give for this restraint, more than for other goods, is because the King, by statute, is restrained to a custome certaine for those commodities, as the halfe mark a sack of wool, and halfe a mark three hundred woollfells, and thirteene shillings foure pence a last of lether; and therefore great reason he should not exceed this custome in these commodities. Statutes 3.

This objection receiveth many answers: First it appeareth both by the expresse letter of divers of the Lawes made in this point by the occasion that induced the making of the Lawes, and by the execution of them, that all other wares and merchandises, aswell as those of the staple, were within the purpose and intent of those Lawes: Secondly, the reason alledged, why there should be re-

restraint for the staple commodities, rather than for the other, is mistaken; for the Lords and Commons did grant to E. 1. by act of Parliament the custome of the halfe mark for wooll, woollfells, and lether, which was matter of mere grace and liberality, and includeth no restraint in it, but rather a favourable extention, quite contrary to the sense of the objection; according to that rule of interpretation, *Gratiosa ampliati decet, odiosa restringi*. And admit some Lawes be made expressly to restraîne impositions upon wooll, woollfells, and lether, by reason that the occasion of making such Lawes was the actuall imposing, upon those goods at that time, shall we not by good construction, *Secundum mentem extensivam legis*, extend this law to other wares and merchandizes, that are within the same mischiefe? If we look to the reason of the law, we shall make no doubt of it; for that is, because the impositions were without assent of Parliament, not because they were upon such, and such commodities. Besides those Lawes so made are *declarativa juris antiqui, non introductiva novi*.

In the enumeration of those statutes, which I conceive make directly to this purpose, I will endeavour rather to answer the objections made against them, than to enforce the sense and meaning of them, which is very plaine and open, and needs no interpretation. The first statute enforced is, *Magna charta cap. 30.* made in the ninth yeare of H. 3. by which it is enacted, that all Merchants shall have free egress, and regress, out of, and into this Realme, with their goods and merchandizes, to buy, and sell, *sine omnibus malis tobnetis per antiquas, & rectas consuetudines*: in which words we may inferre, that both the use and right of imposing are absolutely excluded, and debarr'd; for *Consuetudo*, which in this case is to be taken for *Usage*, which is *mos* (not improperly for *Portorium*, a duty paid in money, as our English word Custome, in one sense doth signifie) implyeth a begining, and continuance by consent, and will of the parties; not by power, and enforcement which cannot be a custome; and

and therefore it cannot be an imposition: for that ariseth merely out of the will and power of their imposer, and is against the will of him, upon whose goods it is set: But take *Consuetudo* either for *mos* or *portorium*, the epithetes with which it is qualified *antiquum*, and *rectum*, doe describe it to bee of that nature, that it cannot be an imposition: for *antiquum*, in legall construction, is that which is time out of minde, that is not an imposition: for then, by continuance of time, it should grow aright by prescription, and were justifiable: *Rectum* implyeth a limited right, which inferreth, there may be a wrong and exceeding of that right, which is not in impositions: for if there be a right in the King to impose, the quantity, time, and other circumstances are in his discretion; the right is illimited: And if he set on never so great an imposition, there is as much right in it, as if it be never so small: the excesse maketh it a burthen, but not a wrong.

We may further observe, that in the statute, *malum tollendum*, which is evill toll, is set downe by way of antithesis to *antiqua* and *recta consuetudo*; by which is inferred, that exactions upon wares and merchandizes, not qualified with these two properties of *antiquum* and *rectum*, are evill and unjust. This is made more evident by a Record in the Tower of the sixteenth yeare of *H. 3.* which was a mandat sent by the King to the Customers of his ports for the execution of this law made in *9. H. 3.* whereby it is commanded, *Quod omnibus Mercatoribus in portum suum venientibus, cum vinis, et aliis merchandis scire faciant, quod subdo & secure in terram Anglie veniant cum vinis & mercandis suis, faciendo inde rectas & debitas consuetudines, nec sibi timeant de malis tollentis, que eis faciat Rex, vel in terra sua fieri permittat.* By this record the word *Consuetudo* is interpreted to be *mos*, not *portorium*, otherwise it should have beene *solvendo consuetudines*, not *faciendo*. Also these words *antiquum* & *rectum* in the statute in this writ are *rectum* & *debitum*, which doth more enforce a certainty of right and duty,

which

Rot. clauf.  
16. H. 3.  
num. 20.



which by no meanes can be intended in impositions.

Objections against this law were made in the last argument. First, that it was made for Aliens: this is true; the words of the Law doe plainly shew it was made for Aliens: but if the State was so carefull to provide for them; shall we not judge that with Denizens it was so already? and that this statute was made to extend that liberty by act of Parliament to Aliens, which Denizens had by the Common law: succeeding times did so conceive of it, as appeareth by the statute of 2. E. 3. cap. 9, the words are, that all Merchants, strangers, and Princes may goe and come with their merchandizes in England, after the tenor of the great Charter, and that writs bee thereupon sent to all the Sheriffs in England, and to Maiors, and Bayliffs of good townes where need shall require.

A second objection was made in the last argument, out of these words of the statute of *M. Chart.* that Merchants might freely traffique, *Nisi publicè antea prohibiti fuerint*: by which was enforced, that the King had power to restraine and prohibit traffique; therefore to impose. It is agreed, there may be a publick restraint of traffique, upon respects of the common good of the kingdome; but whether that which is called *publica prohibitio* in the statute, be intended by the King alone, or by act of Parliament, is a question: for such restraints have still beene by Parliament. But admit the King may make a restraint of traffique in part, for some publick respect of the common wealth, he doth this, in point of protection, as trusted by the Common-wealth, to doe that which is for the publick good of the kingdome; but if he use this trust to make a gaine and benefit by imposing, that is a breach of the trust, and a sale of government and protection. But more of this shall be hereafter spoken in the answering of the maine objections.

The next law is that notable statute of *E. 1.* in the 28 yeare of his reigne made upon the very point in question: the words are these; And forasmuch as the more part  
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of the Commonaltie of this Realme finde themselvesore  
 grieved with the male toll of Woolls, that is, to wit, a  
 toll of forty shillings, for every sack of Wooll; and  
 have petitioned to us for to release the same; Wee  
 at their request have clearly released it, and have gran-  
 ted for us and our heires, that wee shall not take such  
 things, without their common consent and good will,  
 saving to us and our heires the customes of Woolls,  
 Skins, and Leather granted before by the Commonalty  
 aforesaid. Against the application of this Law to the  
 question now in hand, many objections were made,  
 some out of matter precedent to the Law, some out of  
 the Law it selfe, some out of matter subsequent and  
 following after the Law: For matter precedent; It was ob-  
 jected out of *Tho. Walsingham* an Historiograper of good *Walsingham* in  
 credit, that Writ of that time when the Statute was made, *E. 1. fo. 71.*  
 That in the petition of grievances given to King *E. 1.* by the *72. 73. edit.*  
 people in the 25. yeere of his raigne, upon which petition *per W. Cam*  
 the statute was made, that they found themselves not grie- *den impres.*  
 ved in point of right, but in point of excesse; the words *Francofur-*  
 are, *Communitas sentit se gravatam, de vectigali lanarum*  
*quod nimis est onerosum, viz. de quolibet sacco 40. s. &*  
*de lanâ fractâ septem marcas;* So they expresse the cause  
 of their grieve, that it was too heavie; which is to bee  
 applied to the point of excesse, not of right.

To this I answer, that if the words had been (*quia est*  
*nimis onerosum*) this construction might have been made  
 out of them; because the word (*quia*) had induced a de-  
 claration of the cause of that which was formerly affir-  
 med: but the words are (*quod nimis onerosum*) which doth  
 onely positively affirme that the imposition, *de facto*, was  
 intolerable for the greatnesse of it, which doth not there-  
 fore admit that it is tolerable, in respect of the right the  
 King had to impose. But this is made cleare by the ge-  
 nerall word precedent in the preamble of the petition,  
 which doth evidently inferre, they grounded their com-  
 plaint upon point of right, not upon point of of excesse;  
 the words are these, *Tota terra communitas sentit se valdè*  
*gravatam, quia non tractantur secundum leges, & consuetu-*

Math.  
Westm. fo.  
430. Edit.  
p. r H. Sa-  
vile mil.  
Francofur-  
ti 1601.

*dines terra, secundum quas tractari antecessores sui solebant habere, sed voluntarie excluduntur.* After which preamble, among the particulars, this of forty shillings upon a sack of Wooll is ranked, but with a dependencie of that expressed in the preamble, for the point of right. But seeing wee light upon History, which though it bee of small authority in a Law argument; yet being the History of our owne Realme, hath fir and proper use in the common counsell of the Realme, I will pursue it a little further. Out of *Math. Westm.* a Writer, that lived much nearer the time of the Law made, then *Thomas Walsingham*; he saith, That the Commons by their petitions required, *Ne Rex de cœtero tallagia usurparet, & voluntarias super his inductas exactiones de cœtero quasi in irritum revocaret*; by which it appeareth, that the point of the complaint was, that the exactions layd on them were voluntary; that is, at the Kings will, without assent of Parliament. Out of the Law it selfe, it hath much been pressed, as first the Commons made petition to the King, wherupon they inferre out of the nature of the word (petition) that their proceeding was by way of grievance, for the excesse and inconvenience, as a matter of grace, not in course of justice for the wrong.

Iob. 5. 13.

To this I answer, that considering the qualitie of the parties to this action, it being betweene the King and the subject; duty and good manners doth induce gentleness and humilitie of termes, without blemish, or diminution of the force of right. It is according to the demeanor of *Iob*, cap. 9. v. 15. *Though I were just, yet would I not answer, but I would make supplication to my judge.* But in our formes of Law, be the right of the subject never so cleare, manifest, and acknowledged by all; yet if his own be detained from him by the King, he hath no other writ or action to recover, but a mere petition, *Supplicat celsitudini*, &c. So as if the word petition to the King inferre defect of right in the petitioner; there can be no case where the King can doe the subject wrong.

A second objection out of the body of the Law is, that the



the King doth release that imposition of forty shillings, which implyeth a right settled in him. But to this I answer, that it is no necessarie inference, that wheresoever a release of right is : for it is used for claime only, or where possession was, though wrongfull, and that *in maiorem securitatem, quia abundans cautela non nocet*; But in this case, a release was very expedient, and for some respect necessary, to extinguish a right the King had in this imposition against the Marchants themselves: For this imposition, though it were not set on by assent of Parliament, yet was it not set on by the Kings absolute power; but was granted to him by the Merchants themselves who were to bee charged with it : so the grievance was the violation of the right of the people, in setting it on without their assent in Parliament, not the damage that grew by it; for that did only touch the Merchants, who could not justly complaine thereof, because it was their own act and grant. This appeareth by two notable records, the one 22. E. 1. A writ to the Treasurer and Barons of the Exchequer in Ireland, to discharge the Merchants there, of impositions on Woolls; in which the King reciteth, *Licet in subsidium Guerra Regis pro recuperanda terrâ Vasconiâ, mercatores grater concesserunt per biennium vel triennium, si tantum duraverit Guerra, de sacco lana, &c.* The other record is the Writ of publication that in 26. E. 1. went out after the Statute of 25. in which Writ the King reciteth thus, *Cum nos ad instantiam Communitatis Regni nostri remiserimus custumam 40. s. nobis nuper in subsidium Guerra nostre contra Regem Francia concessum, &c.* A third objection made out of the body of the Statute, by those which have argued on the contrary part was upon these words, that the King would take (no such things) without common consent : by which words they conceived the intencion of the Law, was limited precisely to impositions set upon wooll, and not on other commodities, which are not such things, but other. And for this they alledge this reason, That it was not probable when the complaint was only for

22. E. 1. O.  
rigen. in  
Scac. Rem.  
Thes.

In 26. E. 1.  
mem. Scac.  
Rem.  
Thes.

an imposition on Wooll, that the King would give a remedy for other things not spoken of, for which there was no cause of complaint.

To this a full answer is given many wayes: first out of the (*Saving*) in the Act, which extends to other things than to Wooll, as to Wooll-fells and Leather; therefore the purview of the act by these words (such things) extendeth to more than the Wooll; for there needs no *Saving*, but for that which is contained in the purview. Secondly, the reason alledged, that no more by likelihood should bee remedied, but for Wooll; because only that was complained of, is false: For the complaint of the Commons was not only for this imposition on Wooll; but divers other burthens and grievances of the like nature. And this will appeare if wee compare all the parts of the Law the one with the other: for this Law is in the forme of a Charter written in French, and beginneth, *Edward by the grace of God, &c.* And is an entire grant, and instrument without fractions, sections, and Chapters, as it is now printed, and containeth in it, next before this last clause concerning the impositions on Woolls, which in the printed Book is *Cap. 6.* That the King, for no businesse from thenceforth, will take no manner of aydes, mises, nor prises, but by common assent. This word (*mises*) in French signifieth properly impositions, derived of the word *mitto*, in Latine (to put) so the word (such things) is a conclusion to all the premises, and hath relation not only to that which is made *Cap. 7.* by the Printer, and concerneth the male toll of Woolls; but to that precedent which is (all other aydes) impositions, and takings.

Mean.  
Scac. in  
26. E. 1.  
Rsm.  
Thef.

The Writ of publication of this Statute sent out to all parts in 26. E. 1. maketh plaine this construction; the words of it are, *Concedentes quod custumam illam vel aliam, sine voluntate, vel communi assensu non capiamus*: These words (*vel aliam*) are indefinite, and extend to any other whatsoever, besides that of Woolls. The Writ doth further discharge Merchants for the Commodities of Wooll.

Wooll-fells, and Leather, which are not complained of by name in the Statute; and therefore the Law was intended to other impositions, aswell as to those upon Woolls.

The objection made out of matter subsequent to the Statute was this, that notwithstanding this Law of 25. E. 1. impositions that before the statute had bin set on other Merchandize than Woolls, were still answered after the Statute; and for instance of this was alledged, that whereas 16. E. 1. an imposition of 4. s. the Tonn was set upon Wines brought into the Kingdome, an accompt was made of this in th' exchequer in 26. E. 1. as by the records there appeareth; by which it seemeth that the Law of 25. E. 1. was not taken to extend to wines, and such other Commodities, other than Woolls named in the Statute. It is true, such an imposition was set on by E. 1. in the sixteenth yeere of his raign, and an accompt made for it 25. and 26. But it appeareth by the record of the accompt, that it was made for the time ended before the Statute made: As from the eighteenth of May, 16 E. 1. to 23 Jul. 22. E. 1. But there is no record, that ever any accompt was made for any money received for that imposition, for the time after the Statute made; neither was it very willingly answered before; for it appeareth by the record, that it was ten yeere after the setting of it.

16. E. 1.  
Orig. R.  
Thes.

25. & 26.  
E. 1. de  
compt. T.  
Mich. R.  
Thes.

The third Statute alledged on the behalfe of the Subject is that 34. E. 1. ca. 1. the words are these, No tallage or aide shall be taken or levied by us, or our heires in our Reälme, without the good will and assent of our Arch-bishops, Bishops, Earles, Barons, Knights, burgeses, and other freemen of the land. Against this was objected, that this Statute was intended only upon the taxes & impositions of things; The word *Auxilium* makes it cleare, that it is to be intended further then of things within the realme; for *tallagium* is commonly intended of Domesticall taxes, but *auxilium* is the most usuall terme for impositions upon goods imported and exported.

34. E. 1. ca. 1.  
I.



ted, as by the acts of Parliament by which such impositions are given to the King, in which they are called most commonly by the name of Aydes, as proceeding of good will and benevolence.

5. E. 2. ca.  
14 Rot.  
Ordin.

The fourth Satuce alledged on this part is that of 5. E. 2. ca. 14. juſt in point of the matter in queſtion; and therefore I will ſet it downe as I finde it *Verbatim* in the record in the tower, *Enſement nouvelles cuſtomes ſont levies, & anciens enhaunces come ſur levies drapes, vine, aver du pcis, & aut choſes parquoy les Merchants veynont plus vilement, & meynes de bien, manynont en la terre, & les Merchants eſtrangers de murront plus longment que ils ſoloyent faier, pur le quel demoure les choſes ſont le plus enhaunces que ils ne ſoloyent eſtre, al damage de roy, & de ſon people. Nous ordonoms que tous manners de male tolls levies pries de Coronement de Roy Ed. faier de Roy Henry ſoyant entirement ouſtes, & de tout eſtreints pur tous jours, nient contriſteant le Chartre que le dict Roy Ed. fiſt as Merchants aliens, pur ceo que il fuit fait contra le grand Char. & encontre le Franchiſe de la City de Londres, & ſans aſſent de Baronage, &c. Savant neque dont al Roy le cuſtome de leyues, peulx, & de quirs, &c. ſi aver les doet.*

By this Law is recited, that by the levying of new couſtomes, and by the raiſing of old, traffique was deſtroyed, and all things made deare; And therefore all new impositions and cuſtomes were diſcharged *Charta mercatoriū*, by which cuſtome was encreaſed on aliens, was taken away, and the reaſon alledged; Becauſe it was *ſans aſſent de Baronage*, and againſt the great Charter. And this is further which this claufe, Saving to the King his cuſtome of wooll, woll-fells and Lether, *Si aver les doet.* Great warres have been raiſed againſt the credit of this Law in the Parliament houſe, and three things have been eſpecially objected againſt it; Firſt, that it is no Law, for it was enforced upon the King, by ſome of the nobility that were too ſtrong for him, the Realme being then in tumult and mutiny about the quarrell

quarrell of *Peirce of Gaveston*, so never had the Kings free consent; but he gave way unto it for feare of greater mischief: Secondly, that in it selfe it is unjust, as in taking away the custome granted to the King by *Charta mercatoria* 31. E. 1. and in making doubt whether the King should have the custome of wools, &c. by those words, *Saving it to him, Si aucter les doct.*

The third objection is, that if it were a Law, it is repealed.

To these I give particular answers.

To the first: that this statute was made both at the instance of the King, and people, with a purpose and intention on all parts to settle things in a stay and order, both in the Kings house, and Common-wealth: the King and his nobles standing in good termes, when this businesse was taken in hand; and it was begun and ended with great solemnity and ceremony: for the King in the third yeare of his reigne gave Commission under his great Seale to 32. Lords spirituall and temporall; of which there were eleven Bishops, eight Earles, and thirteene Barons; they being as Committees of the higher House to devise ordinances, for the good government of of his house and his Realme. In which Commission he doth for the honour of God, the good of him, and of his Realme, of his freewill graunt to the Prelates, Earles, and Barons, and others elected by the whole Kingdome, full power to ordaine the State of his house and Realme by such ordinances, as by them should bee made, to the honour of God, the honour and profit of holy Church, the honour of himselfe; the profit of him and his people, according to right and reason, and the oath hee made at his Coronation.

Com. 16.  
M. r. 3. E.  
2. Rot. or.  
din. 5. E. 2.

These joyning with others of discreet Commons in Parliament, and taking every of them a solemn oath for their sincere demeanor in the businesse, did make this and other ordinances, which were so well liked of by the King, that after they were made, hee took an oath to observe them,

Pullic. 3.  
Kal. Oct.  
5. E. 2. Rot.  
ordin.  
Pat. 5.  
Oct. 5. E.  
2. Rot.  
ordin.

them, and caused them to be published in *Pauls Church-yard* by the Bishop of *Salisbury*<sup>1</sup>, by denouncing excommunication, against all that should wilfully infringe them: And by his Letters Patents dated 5. Oct. 5. *regni sui*, did send them through the Realme to be published, and from thenceforth to be observed, thereby signifying his great liking and approbation of them; after which they had the force and power of Lawes given unto them in the Parliament, in the fifth yeere of his reign.

The second obiection, which is the injustnesse of the law, instanced in two points; the taking away of *Charta mercatoria*, and the doubting of the Kings right to the custome of wolls, woll-fells and Lether, &c. To the first of these, I deny it to be unjust, but to be according to the law of *England*, and liberty of the Kingdome: for that Charter did containe in it divers grants of things, which were not in the power of the King to grant, without assent of Parliament; as the triall *per medietatem lingua*, and other things tending to the alteration of the Law, and burdening of the people; and therefore that Charter never had his undoubted and settled force, until it was confirmed by act of Parliament, but lay asleep almost twenty yeer together, without being put in execution, between 5. E. 2. and 27. E. 3. when it was confirmed, for the doubt that is supposed to be made in the statute of the Kings right to the custome of wooll, wooll-fells, and Lether I take it there is no such doubt made: For the words (Saving the kings right to the custome of woolls *si aver les doet*) have this construction, that is, at such times as hee ought to have it: so the word (*si*) hath the signification of (*quando*) for it had been a folly to have made a Saving of that, of the right whereof they had doubted, neither is it likely but that they would have taken it away, if it had not been lawfull; but there was no colour to doubt of the right of it, for it was given by act of Parliament, and ever continued in force without challenge, or exception to the lawfullnesse of it.

The



The third objection is, That this Statute is repealed : To this I plead, *Nullum vale recordum*. If it be repealed it must be by Act of Parliament, for *numquodq; dissolvitur iisdem modis quibus est colligatum* : I and others have searched the Records of the Realme, and endeavoured by all means to informe our selves of the truth herein, and we can finde no Act of Parliament of repeale : The truth is, some Kings finding these Lawes not to sort to their wills and humours, have endeavoured to suppress them, but they did never yet obtaine a repeale of them by Act of Parliament.

But it is further urged, That although there were no formall repeale of the Law, yet it was never put in execution as a Law, but even presently upon the making was rejected, and use and practise went quite against it : And for instance hereof, a Record was vouched that *E. 2.* held himselfe so little bound by it, as that in the 11 yeare of his raigne he fet an imposition without assent of Parliament upon Wooll, Wooll-fels, Leather, Wines, Cloth, *averde pois*, and divers other kinde of Merchandizes. To this I answer, that if it were true, that a distinct and impotent King, as he was, did contrary to the Law ; doth this make the Law void and no Law : But if wee looke into the whole Record, and skanne this action of *E. 2.* from the beginning of it, unto the end, we shall finde it a very good instance to prove the practise and execution both of this Law of *5. E. 2.* and of that in *25. E. 1.* for it is true that *E. 2.* in the 11 yeare of his raigne did borrow of the Merchants a certaine summe of money above the due custome of Wooll, Wooll-fels, Wine, *averde pois*, Leather, and such other goods imported and exported ; But it appeareth by the Record, hee tooke it but for one yeare ; hee tooke it by the advise and counsell of the Merchants : and he took it *per viam mutui*. as a loane, The direction of the Writ is, *Collectoribus mutui nobis per mercatores alienigenas & indigenas de certis rebus & Merchandisiis que ad certum tempus faciendi*. This was done in good tearmes, he did not claime it as his right, but did borrow it, which I doe thinke is a good evidence against his right : But what be-

Rot. finium 11.  
E. 2.

came of this? the State would not abide it, for all these faire shewes. And therefore afterwards the King sendeth out other Writs by which he dischargeth all merchandizes of this loan, saving onely Wooll, Wooll-fels, and Leather, and for the loane taken upon those commodities, it was limited to continue but untill Michaelmas after, and good security was given to the Merchants by the Customers to pay themselves by way of defalcation out of the Customes which should be due after Michaelmas, those summes which were so borrowed of them. The words of the Record are worth the observing, *Cum pro expeditione guerra Scotia, & alijs arduis & urgentibus necessitatibus nobis multipliciter incumbensibus, pro quarum exoneratione quasi infinitam pecuniam refundere oportebit, pecunia plurimam indigeamus in presenti, & nuper pro eo quod exitus regni & terrarum nostrarum simul cum pecunia nobis in subventionem premissorum tam per Clerum quam Communitatem regni nostri concessa ad sumptus predictos cum festinatione qua expediret faciendos, non sufficiunt, exquirentes vias & modos quibus possemus pecuniam habere commodius & decentius pro premissis de consilio & advisamento quorundam mercatorum tam alienigenarum quam indigenarum viam invenimus infra script, viz.* And so setteth down the manner of the loan, and the security for the payment of it: This (I take it) was neither an imposition, nor a wrong in any respect. Also by the first Record it appeareth, that the loane set on Wines, averdepous, and such other commodities, besides Wooll, Wooll-fels and Leather were presently discharged by E. 2. which sheweth they were taken to be within the intent of the Statute of 25 E. 1.

14 E. 3. Stat. 1.  
ca. 21.

The first Statute alledged on the behalfe of the subject is that 14 E. 3. Stat. 1. ca. 21. by which the Commons pray the King to take no more then th' old custome of the halfe marke. The King prayeth aide of the Commons for a time above the custome upon his necessity of warres. And the conclusion is that by that Act the King doth grant that after the feast of Pentecost twelve moneths following, he will take no more of Wools, Wooll-fels & Leather, but

but the old Custome, and doth promise to charge, set, or assesse upon the Custome but in manner as aforesaid.

The sixth Statute is 14. E. 3. Stat. 2. ca. 1. The King doth grant by way of Charter to the Prelates, Earles, Barons, Commons, Citizens, Burgesles and Merchants, that they be not from thenceforth charged nor grieved to make any aide or sustaine charge, if it be not by the common consent of the Prelates, Earles, Barons, and other great men, and Commons of the Realme, and that in Parliament. 14. E. 3. Stat. 2. ca. 1.

These two Statutes grew upon occasion of an Imposition set on Wooll by the King without assent of Parliament: Little hath beene objected against them, but onely to the first, that it was obtained of grace, and not upon instance of right, which they gather out of the words of the Law, which are, The Commons pray the King that he would stablish, that from henceforth no more but the old custome be taken. The like reason may be made against the King out of the same words in the same Law: for the King in the same Act prayeth the Commons to give him an Imposition upon Wools for a time above the old Custome: but the Record of the Petitions exhibited in Parliament, upon which these two Lawes are made, cleareth the objection.

The first was delivered by the Lords in this forme, *Les grands volunt*, that the maletoll set on Wools newly, be altogether abated, and that the old custome beheld, and that they may have this in point of Charter, and by inrollment in Parliament. This word (*volunt*) had beene too high for a suit of grace, and therefore must be intended of right. The Commons Petition in forme, is somewhat humble, but in effect and purpose is rough and sterne: the words are these, The Commons pray that the maletoll of Wools be taken as it was used in ancient time, which is now enhaunced without the assent of the Commons, and (*grandes*) as we conceive, and that if it be otherwise demanded, that every one of the Commons may arrest them without being challenged. According to these Petitions,

*Rot. parl. 13.  
E. 3. num. 13.*



the first of these two Lawes, is by inrolment in Parliament: the second is in forme of a Charter: the first doth expresse some special commodities: the second doth reach generally at all.

14. E. 3. Stat. 2.  
ca. 2.

The seventh Law directly touching this point, is that 14. E. 3. Stat. 2. ca. 2. The King doth grant according to the great Charter, that all Merchants denizons, and forrainers may without let safely come into the Realme of England with their goods and Merchandizes, and safely tarry, and safely returne, paying the Subsidies, customes and other profits reasonably due. Upon the words of this Law, was great advantage taken, in this, that besides custome and subsidy, which comprehend all the certaine ordinary duties, the King hath upon the & wares & goods of Merchants, there are other profits spoken of to be due: these they affirme cannot be understood but of Impositions by the King without assent of Parliament.

To this I answer, if they were not duties due to the King besides, Custome and Subsidie, which might satisfie the intention of these words, this objection might have had some colour in it: but it is plaine that besides these two, there are other profits due to the King upon Merchants goods, as Scavage, Tonage, and the like.

Rot. parl. 50.  
E. 3. an. 163.

And you shall finde a Petition in Parliament, 50. E. 3. against the raising of these above the old rate.

15. E. 3. Stat. 2.  
ca. 5.

The eight Law is E. 3. Stat. 2. ca. 5. whereby it is enacted that every Merchant may freely buy and sell, and passe the sea with their Merchandizes of Wooll and all other things, paying the Custome of old time used, according to the Statute made the last Parliament in Midlent, which was the Stat. 14. E. 3. Stat. 2. cap. 2. This Law doth expressly exclude the novelty of Impositions.

18. E. 3. Stat. 1.  
ca. 3.

The ninth Law is that 18. E. 3. Stat. 1. ca. 3. Whereby it is enacted that the sea be open to all manner Merchants to passe with their Merchandizes where it shall please them.

27. E. 3. Stat. 2.  
ca. 2.

The tenth is 27. E. 3. Stat. 2. ca. 2. for the assurance of Merchant strangers and other, the King doth will and grant

grant for him & his heires that nothing shall be taken over the due Customes, nor taken of them to his use by colour of sale, or in other manner against their wils.

The eleventh is 38. E. 3. ca. 2. that all manner Merchants aliens and denizens may buy and sell all manner of Merchandizes, and freely carry them out of the Realm, paying the Customes and Subsidies thereof due. 38 E. 3. ca. 2.

The last is 22. H. 8. ca. 8. by which it was enacted that Tables should be set up in ports, by which the certainty and very duty of every custome, toll, and duty or summe of money to be demanded and required of wares and Merchandizes shall and may plainly appeare and be declared, to the intent that nothing be exacted otherwise then in old time hath beene used and accustomed. 22 H. 8. ca. 8.

By this late Law it appeareth that the judgement of of the whole Parliament was at that time, that nothing was due upon Wares and Merchandizes, but that which was certaine, and had beene anciently due, by which Impositions are excluded, whose qualities are novelty and uncertainty, as being set on, as present occasion moveth, and proportioned for quantity and other circumstances, as the will of the King directeth.

These are the Lawes which I conceive most directly tend to the restraining the Kings of England from the exercise of that irregular power of imposing, at the first offered by them to be put in execution, yet not pressed as their right, and never practised but upon opposition of the whole State, and at last deserted and given over untill of late. As by that which followeth in the fourth place will appeare.

My fourth and last assertion is, that this practise of imposing without assent of Parliament, is *contra maiorem Maimum*. In this I will make an historicall perustration of the times past, whereby I will discover and make knowne what passages have beene in this businesse in this Kingdome, and especially in the high Court of Parliament for the space of 300 yeares and more last past, since the beginning of the reigne of E. 1. thence which time, and

Customs 4.

not before this Kingdome hath growne into the glory and reputation of foraigne traffique. And as a worthy Gentleman of the Kings learned Councell, made certaine considerations upon this question, framed and strengthened out of the greatnesse of his wit and reason: so I grounding my selfe upon the practise of former times, which is the safest rule where y to square the right both of King and people in this Common wealth, where their right is *jus consuetudinarium*, a right that groweth by use and practise, I will propose unto you certaine observations out of the action and experience of former times untill the raignes of the two late Queenes; by which you may the better ground and frame your judgements in the determination of the right in this question.

My first observation is in point of circumstance, that there never was any Imposition set, but in time of actuall war, and *duplicatis vexillis*: they were set on very rarely and sparingly, but for a short time, and that certaine and definite, and upon some few commodities, and that by the assent of the Merchants that were to beare the burthen. In our time the occasion not so sensible, the continuance to be perpetuall, the number many hundreds, almost no kinde of Commodity spared. I will give you some few Instances of these circumstances out of the Records themselves.

22.E.1.orig.  
Scacc.Rent.  
Thes.  
22.E.1.mem.  
Scac.R.Thes.  
T.Mich.

The maletole of Wooll set on by King E. 1. which gave the occasion of the Stat. 25. yeare of his raigne was given by Merchants. The Record saith, *Mercatores grantanter concesserunt in subsidium guerra Regis*, It further sheweth, it was for his necessity of warre, which then was great also.

Rot.parl.17.  
E.3.nu.28.

For the time of E. 3. there need not many instances, for his whole raigne was almost an actuall warfare. As in the sixt year of his raigne for his warre in *Scotland* and *Ireland*, In the thirteenth year of his raigne for his war in *France*, severall Impositions were set on.

In the seventeenth yeare of E. 3. the Record in the Tower, mentioneth that forty shillings Imposition was upon a sacke of Wooll by the grant of Merchants, and



and it was in the time of Warre.

In the twentieth yeare of King E. 3. it appeareth in the Record, that the Imposition then put upon Wools, was by the assent of Merchants for two yeares, for the necessity the King had in his passage over the sea, to recover his right, and to defend the Realme. *Rot. parl. 20. E. 3. nu. 18.*

My second observation is, never any Imposition was set on by the King out of Parliament, but complaint was made of it in Parliament, and not one that ever stood after such complaint made, but remedy was afforded for it, *Et quod Rex inconsulto fecit, consilio revocavit*, his Sovereigne power controlled his subordinate. In which it is a thing very notable, that the King in no one Case, ever claimed, or so much as ever named his right or prerogative, which no doubt would have been done, if it had been thought due, but gave satisfaction to the complaint by one of these three waies, either by discharging them quite and making some good Law against them. Secondly, by intreating the people to hold them some short time by their favour. Thirdly, by waving his present possession, and taking that of their gift by Act of Parliament, as an aide which he had set on by his absolute power as an Imposition.

Instances of the first 25. E. 1. the Imposition of Wools taken off, and a Law made against it, and the King undertooke for him and his successors to doe so no more: 25. E. 1. ca. 7. *Rot. parl.*  
38. E. 3. 26. the Imposition of three shillings foure pence on a sacke of Wooll put off upon complaint, and a Law made against it, 38. E. 3. ca. 2. the like Statute 45. E. 3. c. 4. 38. E. 3. cap. 2. 45. E. 3. cap. 4. 18. E. 3. cap. 10, 11. R. 18. E. 3. cap. 3.

Instances of the second 21. E. 3. nu. 11. a petition upon an Imposition of 2. s. upon a sacke of wooll, 2. s. upon a tunne of wine, and six pence upon *aver de pain*, all discharged presently, saving the two shillings upon a sacke of wooll, and for that intreated that it might stay till Easter following, and so it did, and was then taken away. 21. E. 3. nu. 11. *R. Parl.*

Instance of the third 25. E. 3. nu. 22, the Commons made *25. E. 3. nu. 22. Rot. parl.*

made petition against an imposition of fourty shillings upon a sacke of wooll granted to the King by the merchants, shewing that they ought not to be bound by their act, The King did not claime right or justifie, but because his warres were great upon his request had it granted unto him for two yeeres by Act of Parliament, and pretended no title of Prerogative, neither was it ever spoken of.

Orig. in Scan.  
31. E. 1. R.  
Tbes.

My third observation is that our Kings have acknowledged that it is not their right, E. 1. in his writs he sent to the officers of his parts to levie three pence on the pound over the old custome, of the Denizons as well as of the Aliens, and to suffer the Denizons to enjoy those privileges the Aliens did enjoy by the payment of the encrease of Custome, doth give this direction expressly. That they should not take it of Denizons against their will, The words of the Record expresse it very fully, *Cum mercatores extranei & alienigena pro quibusdam libertatibus eis per nos concessis & prius nostris quibuscunque remissis, nobis de bonis & merchadisis suis quibuscunque infra regnum & potestatem nostram adducend. ultra antiquas custumas dare concesserint prestationes & custumas subscriptas, viz.* and so setteth downe the increases, and amongst the rest this three pence upon the pound, and so proceedeth, *Ac quidam mercatores de regno nostro & potestate nostra, ut ipsis dictis libertatibus & immunitatibus uti & gaudere, & quod de prius nostris quieti esse possint, prestationes & custumas huiusmodi de bonis & merchandisis suis nobis solvere velint, ut accepimus, assignavimus vos, &c. ad custumas & prestationes predictas de mercatoribus de regno & potestate nostra colligend. qui eas gratanter. & sine coercione solvere voluerint. Ita tamen quod aliquem mercatorem de dicto regno & potestate nostra ad prestationes & custumas huiusmodi nobis invito solvend. nullatenus distringatis.* Surely if E. 1. had claimed the prerogative of imposing, hee would never have given these cautions in the requiring of that which hee had taken to be his due, as that they should not exact it of any of his subjects that were not willing to pay it, nor trouble, nor distraine them for it.

In the twelfth yeere of E.3. wee finde the Record of certaine letters written from the King being then at *Barwick* in the Scottish warres, unto the Archbishop of *Canterburie*, in which letters the King seemeth to have a great confidence in the devotion of the Archbishop, and therefore earnestly intreateth him to further his enterprises with his prayers to God, and then addeth further.

*Ad hoc pater, cum populus regni nostri variis oneribus, tallagiis & impositionibus hactenus prae gravetur (quod dolenter referimus) sed inevitabili necessitate compulsi de eisdem oneribus ipsum adhuc relevare non valeamus, dictum populum ut tantam necessitatem nostram humiliter & benigne patiatur & caritative sustineat, & priorem (quam penes nos concepit de cetero instanter in orationibus & elemosynis suis, oneribus praedictis, quae non ex malitia vel presumptione voluntaria ipsum gravant, non obstantibus) exhibeant caritatem, indulgentiam muneribus & aliis modis, quibus secundum Deum videbitis piis exhortationibus inducat, & nos penes eundem excusetis, speramus namque per Dei gratiam, cuius manus cunctis indigentibus sola sufficiens, & largiflua comprobatur, beneficiis compensatis dictum populum visitare & consolari pro loco & tempore opportunis.*

The principall thing I note out of this Record upon the very point of this my third observation, is, that the King intending to excuse himselfe of the burthens by him laid on the people, and to avoid the blemish of wrong and injustice in laying thereon, saith they were not *onera ex presumptione voluntaria*, that is, burthens that he presumed to lay on at his owne will, whereby hee condemneth impositions without assent of Parliament, which are (*onera ex voluntate Regis*) to proceed of presumption, which doth clearly exclude claime of right, and disproveth the lawfulnessse of the act. But there are divers other notable passages in the Record worthy our marking. As out of the word (*prae gravantur*) used by the King, wee may gather hee did accompt these Impositions a grievous burden to his people, which sheweth his owne pity of them. Hee saith further, *Dolentes referimus*, shewing his



griefe and remorse at it, & *in evitabili necessitate compulso*, hee did it constrained by unavoidable necessity, shewing hee was forced to it against his will, by that which violateth and breaketh all law, which inferreth, hee would not maintaine his action by law; *Adhuc relevare non valentes*; this intimates, hee would ease them in good time; *clementiam exhiberent*; they should afford him charity in the bearing of them, as if so bee in point of justice or right they need not, *Poenas eundem excuseris*, the Bishop should excuse him to the people, By this he did clearly leave the point of justification, and so of right: lastly hee promisseth hee would visite and comfort them *beneficiis compensationis*, would give them recompence for those summes he had so raised of them; which shewed that hee claimed them not as due, for then hee needed not give recompence for them.

Rot. Parl. 21.  
E 3. n. 16.

In the one and twentieth yeere of E. 3. a petition was exhibited in Parliament, that Levies be not made by Commission (so they bee in this case) nor other things laid upon the people unlesse they bee granted in Parliament, The Kings answer is, If any such impositions were made, it was by great necessity, and with the assent of the Prelates, Barons, and some of the Commons present; yet bee will not that such Impositions not duly made bee drawne in consequence. Here the King acknowledgeth an Imposition not to bee duly made though with the consent of the Higher House, and some of the Commons, because it was not in full Parliament; much rather hee would have thought so, if it had beene by the King alone.

King E. 4. (that was a rough and warlike Prince, and was more beholding to his sword in the recovery of his right to the Crowne then to the affection of the people) at a Parliament held the seventh year of his reigne made a Speech to the Commons, Sir John Grey being then Speaker, in which Speech is contained very notable matter, and very pertinent to our purpose; and because the Record is not in print, I will set downe the Kings Speech verbatim as it is entered upon the Parliament roll, and then

then I will make a paraphrase upon it, John Say, and ye Sirs  
 come to this my Court of Parliament for the Commons of  
 this my Realme, The cause why I have cald and summon-  
 ed this my present Parliament is, that I purpose to live up-  
 on mine owne, and not to charge my subjects but in great  
 and urgent causes concerning more the Weale of them-  
 selves, and also the defence of them and of this my  
 Realme, rather than mine owne pleasure as heretofore  
 by Commons of this Land hath beene done, and borne  
 unto my progenitours in time of need, wherein I trust  
 that yee Sirs, and all the Commons of this my Land will  
 bee as tender and kinde unto mee in such cases as hereto-  
 fore any Commons have beene to any of my progeni-  
 tours, And for the good will, kindenesse, and true hearts  
 that yee have borne, continued, and shewed to mee at all  
 times heretofore, I thanke you as heartily as I can : also  
 I trust yee will continue in time comming, for which by  
 the grace of God I shall bee to you as good and gracious a  
 King, and reigne as righteously upon you as ever did any  
 of my progenitours upon Commons of this my Realme  
 in dayes past, and shall also in time of need apply my per-  
 son for the Weale and defence of you, and of this my  
 Realme, not sparing my body nor life for any jeopardy  
 that might happen to the same.

Rot. par. 7, E. 4.  
 The record  
 begins, Me-  
 morandum  
 quod die vene-  
 r. 3. die Parl.

Out of this wee may observe first the Kings Protestati-  
 on to live of his owne, and not to charge his subjects ;  
 by which I gather hee did acknowledge a certain and dis-  
 tinct property of that which was his subjects from that  
 which was his owne, which excludeth the right to im-  
 pose at his will, for if that be admitted, the subjects pro-  
 perty is *proprietas precaria*, not certaine how much of his,  
 is his owne : for that is his which the King will leave  
 him, for there is no limit or restraint of the quantity, the  
 right being admitted, but onely the Kings will.

The second thing I observe is this, that in charging of his  
 subjects he would confine himselfe betweene these two  
 bounds ; the one, it should bee in great and urgent causes  
 concerning more the Weale of them, and the defence of

them and his Realme, than his owne pleasure ; wherein he condemneth those occasions, that grew upon excesse of private expence by over great bounty, or otherwise, and admitteth onely such as grow by reason of warres, or other such like publique causes concerning the whole State : the other bound or limit is, that those burdens should bee *secundum morem majorum*, as heretofore had beene done and borne by the Commons to his ancestours in time of need. The third thing I observe is, that hee acknowledged these burdens did proceed out of their good will and kindenesse, and not out of his right and prerogative ; out of these words, that hee trusted they would bee as tender and kinde to him in such cases as heretofore any Commons had beene to his progenitours : And lastly, wee may note the recompence promised by the King to his subjects, for their good wils and kindenesse, his goodnesse and grace, his just and righteous government ; the jeopardy of his body and life for their Weale and defence. Did this King assume to himselfe a right to lay burdens on his subjects at his owne will without their assents, that offered to buy them at his need with the price of his blood, the most sacred relique in the Kingdome ?

My fourth observation is that in all petitions exhibited by the Commons in Parliament, against Impositions, the very knot of their griefe, and the principall cause of their complaint hath beene expressed in those petitions, that the impositions have beene without assent of Parliament : by which is necessarily inferred, that their griefe was in point of right, not of burden.

*R. par. 21. E. 3. n. 11.* In 61. E. 3. n. 11. the complaint of the Imposition of two shillings upon a sacke of wooll, two shillings upon a tonne of wine, sixe pence upon *aver de pœs*, the cause of grievance expressed because it was done *Sans assent de Commons*.

*R. Parl. 25. E. 3. n. 22.* 25 E. 3. n. 22. In a petition the Commons complained that an imposition upon wools was set by the consent of the merchants, they pray that Commissions bee not made upon



upon such singular grants, if they bee not in full Parliament, and if any such grants bee made, they may bee held as void.

17. *E.3. n.28.* The Commons in their petition informe the King, it is against reason they should be charged with impositions set on by assent of merchants, and not in Parliament. *R. Parl. 17. E.3. n.28.*

My fifth observation is, that whensoever any petition was exhibited against impositions, there was never any respect had of the quantity, but they were ever intirely abated, as well where they were small, as where they were great; no request ever made to make them lesse when they were great, nor excuse made of their ease when they were exceeding small; which sheweth that it was not the point of burden or excesse was respected in their complaint, but the point of meere right.

25. *E.3. nu.22.* Fourty shillings set an imposition upon a sacke of wooll, upon complaint, all taken off, and no suit to be eased of part, because it was too great. *R. Parl. 25. E.3. nu.22.*

36. *E.3. nu.26.* Three shillings and four pence upon a sacke of wooll, all taken off, and no excuse made for the finalnesse; for 21. *E.3. nu.11.* two shillings a sacke, two shillings tonnage, and six pence poundage. *ibid. 38. E.3. nu.26. 21. E.3. n.11.*

50. *E.3. nu.163.* A great complaint was made in Parliament by the Commons that an imposition of a peny was set upon wools for Tropheage over and above the ancient due which was but a peny, and so the subject was charged with two pence. Also that a peny was exacted for Melonage, which was but an halfepeny; which Impositions the Record doth expresse did amount to an hundred pounds a yeere. This petty imposition was as much stood upon in point of right, as the other great one of fourty shillings, and was taken off upon complaint in Parliament without either justification or excuse for the finalnesse of it. *R. Parl. 50. E.3. nu.163.*

My sixth observation is, that those which have advised the setting on of impositions, without assent of Parliament have beene accused in Parliament for giving that

advice, as of a great offence in the State, and have suffered sharpe censure and great disgrace by it. Neither doe I finde that the quality of the person hath extenuated the blame, as 50. E. 3. *William L. Latimer* Chamberlaine to the King, and one of his private Councell was accused by the Commons in Parliament of divers deceits and extortions and misdeeds, and among other things, that hee had procured to bee set upon wooll, wooll-fells, and other merchandises, new impositions, to wit, upon a sacke of wooll eleaven shillings, which the *L. Latimer* sought to excuse, because hee had the consent and good liking of the merchants first. But judgement was given against him that he should be committed to prison, be fined and ransomed at the Kings will, and be put from being of the Councell, and this procuring of impositions to bee set on without assent of Parliament is expressly set downe in the entry of the judgement for one of the causes of his censure.

*Rot. parl 50.  
E. 3. 17, 18,  
19, 10.*

*Richard Lyons* a Ferrior of the Customes in London the same yeere was accused in Parliament for the same offence; he pleaded, hee did it by the Kings command, and had answered the money to the Kings Chamber: yet was condemned and adjudged in Parliament to be committed to prison, and all his lands and goods were seised into the Kings hand, and at the last the hate against these authours of impositions grew so that 50. E. 3. in the same Parliament, a petition was exhibited in Parliament to make this a capitall offence; the Record is very short, and therefore I will set it downe *verbatim*. *Item pris le dis Common que soit ordaine per statute en cest present parliament de tous ceux quux cy en avant mistont ou font par leur singuler profit novels impositions per leur authoritie demesn accrocheants al eux eny ul power de riens que soit establi en parliament, sans assent de parliament, que ils eyent judgement de vie & member, & de forisfacture.* To this rough petition the King gave a milde and temperate answer, *Courge la Common ley come estoit al avant use.*

My seventh observation is the cessation betweene 50. E. 3. after this censure in Parliament; and 4. *Maria*, almost

most two hundred yeeres, during which time no King did attempt to impose without assent of Parliament: and yet we finde in the Parliament rolls, that there was not one of those Kings that reigned in that time, but had impositions granted him upon fit occasion by Act of Parliament upon all goods and merchandises, and at divers times during their Reignes, sometimes more, sometimes lesse upon the tonne and pound, but ever for a time certaine, and definite; so the use of them was not given over, but the power of imposing was so clearly and undoubtedly held to bee in the Parliament, as no King went about to practise the contrary.

But to this cessation that was of great weight and credit in our evidence, a colour was given by the other side to avert the inference made upon it, against the Kings right, that is, that during that time, there was so great a revenue grew to the Crowne by double Custome paid for all merchandises both in *England* and at *Calis* by reason of an Act of Parliament made 8. *H. 4.* which was, that no goods should bee carried out of the Realme but to *Calis*, and by reason that the merchants paid Custome both there and here for the same goods that in the seven and twentieth yeere of *Henry* the sixth the Custome of *Calis* was 68000. pounds the yeere: a great summe if you consider the weight of money then, what price it bore, and by reason hereof Princes not delighting to charge their murmuring subjects but when need is, being so amply supplied otherwise, did not put that prerogative in practice. To this I answer, that if that were true that was urged, it might bee some probable colour of the forbearance of imposing; but I find it to be quite contrary, and that by Record: for there was no such restraint of all commodities not to bee transported to any place but *Calis*, but onely woolls, wool-fells, leather, tinne, and lead, that were staple wares, which by the statute 37. *E. 3.* were to be transported thither, and not to any other place, and the Staple continued at that place for the most part from that time untill long after 27. *H. 6.* but there was no  
double



27.H.3.ca.2.

double Custome paid both here and there by the same owner: but the yeerly profits of the Customes of *Cal-lais* at those times were so farre short of that which hath beene alleaged in 27. H.6. that it appeareth in an Act of Parliament 27. H.6. cap. 2. printed in the booke at large, that the Commons doe complaine that whereas in the time of E. 3. the Custome of *Callais* was 68000.l. *per annum*, at that time, which was 27. H.6. by reason of the ill usage of merchants, it was fallen to bee but 12000. pounds the yeere, so then there was great cause in that respect to have set on impositions by reason of that great abatement of Customes, and yet it was not then offered to bee done without assent of Parliament. But if you looke a little further into the extreme necessities of those times, you shall finde there never was greater cause to have strained prerogatives; for it appeareth in an Act of Parliament 28. H.6. that it was then declared in Parliament by the Chancellour and Treasurer who demanded reliefe of the people for the King, both for payment of his debts, and for his yeerly livelihood, that the King was then indebted 372000. pounds, which now by the weight of money amounteth to above 1100000. pounds, and that his ordinary expences was more than his yeerly revenue by 19000. pounds yeerly: so if ever there was cause to put a King to his shifts, it was then; yet wee see they did not venture to put in practice this supposed prerogative. It further appeareth in that statute that the people among those reasons they alleaged why they were not able to reteine the King, gave this for one, that they had so often granted him tonnage and poundage upon merchandises, by which it appeareth hee tooke nothing of merchants by imposition without grant, for if he had, no doubt they would not have stucke to have put him in minde of it. But I pray consider what became of this motion of the Chancellour and Treasurer: the proposition had depended in Parliament many yeeres; the effect was, the people intreated the King to resume all grants he had made from the beginning of his Raigne untill that time,

being

being the twenty eight yeare of his raigne, excepting such as were made upon consideration valuable, that he might so enable himselfe by that meane by which he had impoverished himselfe and the whole Kingdome : This tooke effect, and the Statute of Resumptions was thereupon made the same yeare, which Record because it is not in print, and declareth these things with great gravity and authority : I will set downe the very text of it, so much as is materiall to our purpose.

Prayen your Commons in this your present Parliament assembled to consider, That where your Chancellor of your Realme of England, your Treasurer of England, and many other Lords of your Councell, by your high Commandement to your said Commons, at your Parliament holden last at Westminster, shewed and declared the State of this your Realm, which was, that ye were indebted 372000.l. which is grievous, and that your livelihood in yearly value was but 5000. l. And forasmuch as this 5000.l. to your high and notable State to be kept, and to pay your said debts, will not suffice : therefore that your high Estate may be relieved. And furthermore it was declared, that your expences necessary to your household without al other ordinary charge came to 24000. l. yearly, which exceedeth every yeare in expence necessary over your livelihood 19000. l. Also pleaseth it your highnesse to consider, that the Commons of your said Realme be as well willing to their power, for the releeving of your Highnesse, as ever was people to any King of your Progenitors that ever reigned in your said Realme of England : but your said Commons been so impoverished, what by taking victuall to your household, and other things in your said Realme, and nought paid for it, and the quinzime by your said Commons so often granted, and by the grant of tunnage and poundage, and by the graunt of Subsidie upon Wools, and other graunts to your Highnesse, and for lack of execution of justice, that your said poore Commons be full nigh destroyed

28.H.6.Stat.  
de Resump.in  
turri Lond.  
not printed.

stroyed, and if it should continue longer in such great charge, it could not in any wise be had, ne borne : wherefore pleaseth it your Highnesse the premisses graciously to consider, and that ye by the advice and assent of your Lords Spirituall and Temporiall, and by the authority of this your present Parliament, for the consideration of your high Estate, and in comfort and ease of your poore Commons, would take, resume, lease and retaine in your hands and possession all honours, &c.

This was very plaine dealing by the people with their King, and this is the successe of the demaund of supply and support had in those daies, being required in point of gratification, without any recompence or retribution for it. Thus then wee have cleared this point, that betweene 50. E. 3. and 4. *Maria*, there was not one imposition set without assent of Parliament.

Queene *Mary* in the fourth yeare of her raigne, upon the wars with France, set an Imposition upon Clothes for this consideration, that the custome of Woolls was decayed, by reason for the most part they were made into Clothes, which afforded little custome; for that which in Wooll, paid for custome and subsidie 40. s. made into Cloath paid but 4. s. 4. d. To recompence this by an indifferent equality, there was set upon a Cloath 5. s. 6. d. which imposition did not make up the losse sustained in the custome of Wooll, by 13. s. 4. d. in 40. s. This was *Inustum*, but not *Iuste*. This religious Prince invironed with infinite troubles in the Church and Common-wealth, and much impoverished by her devotion, in renoucing the profits of the Church lands that were in the Crowne by the suppression, was the first that made digression from the steps of her worthy Progenitors, in putting on that imposition without assent of Parliament; for that very consideration of the losse of custome, by turning of Wooll to Clothing, came into treatie in the 24. yeare of E. 3. when the art of clothing began first to be much practised in this Kingdome, and then  
in,



in the recompence of the losse so sustained in the decay of custome of Wools, there was set upon a Cloath by act of Parliament above the olde custome, 14. d. for a Denizen, and for an Alien, 21. d. This is recited in a Record in the Exchequer, 48. E. 3. rot. 2. R. *thes. in origin.* But I pray you examine how this imposition of Queen Mary was digested by the people. We see in the Case in my Lord Dier 1. Eli. 48. E. 3. R. 7. *Orig. in Scacc.* *R. Thel.* *1. Eli. Dyer so.* 165. that the Merchant found great griefe at it, and made exclamation and suit to Q. Eliz. to be unburdened of it : The very reason of their griefe expressed in that case is, because it was not set on by Parliament, but by the Queenes absolute power ; So that was the ground of that complaint, the very point of right.

This cause was referred to all the Judges, to report whether the Queene might set on this imposition without assent of Parliament : They divers times had conference about it, but have not yet made report for the King, which is an infallible presumption, that their opinions were not for him ; for it is a certain rule among us, that if a question concerning the Kings prerogative, or his profit be referred to the Judges, if their opinions be for the King, it will bee speedily published, and it were indiscretion to conceale it ; but if there be no publication, then we make no doubt, but that their opinions are either against the King, or at least they stick, and give none for him.

The same Queene Mary upon restraint of bringing in of French commodities occasioned by the then wars with France, set an imposition upon Gascoigne Wines, which continueth yet : So the kingdome of England by the injustice of that Prince was clogged with those two heavy impositions contrary to the right of the Kingdome, and the acts of her Progenitors.

Queene Elizabeth set on that upon sweet Wines, which grew also upon the occasion of the troubles with Spaine. That upon Allome was none, it was rather a Monopolie to Master Smith the Customer of London, for the ingrossing

of all Allomes into his owne hands, for which priviledge he gave a voluntary imposition upon that commodity : It was like the priviledge granted to *John Pechey* of the sweet Wines by *E. 3.* for which the Patentee was called into the Parliament house, *50. E. 3.* and was there punished, and his Patent taken away and cancelled.

What impositions have been set on in the Kings time, I need not expresse, they are set downe particularly in the booke of rates that is in print, they are not easily numbered: the time for which they are raised is not short, the Patent prefixed to that booke bearing date *28. Julij 6. Jacobi* will instruct you sufficiently in that point; they be limited to the King, his heires and successors: which I suppose is the first estate of Fee simple of impositions that ever man read of.

My eighth and last observation is upon tunnage and poundage given to the King of this Realme, upon Wares and Merchandizes exported and imported, which is an imposition by act of Parliament, and as it will appeare, was given out of the peoples good will, as a very gratification to the King, to enioyne him thereby from the desire of voluntary impositions, and to conclude him by that gift in Parliament from attempting to take any other without assent of Parliament, for after the ceasing of voluntary impositions, these Parliamentary ones were frequent in the times of the King that succeeded, but they were never given but for yeares, with expresse caution how the money should be bestowed, As towards the defence of the Seas, protection of traffique, or some such other publique causes: sometimes speciall sequestrators made by the act of Parliament, by whose hands the money should be delivered, As *5. R. 2. cap. 3.* in a printed Statute. The rates that were given were very variable, sometimes ii. s. tunnage and vi. d. poundage, as *7. R. 2.* iii. s. tunnage, and xii. d. poundage, *10. R. 2.* which grants were not to endure the longest of them above a yeare, xviii. d. tunnage, vi. d. poundage, in

*17. R. 2.*

*5. R. 2.*

*Rot. Parl. 7. R. 2.*

*n. 13.*

*10. R. 2. n. 12.*

*7. R. 2. n. 12.*

17. R. 2. iii. s. tunnage, and xii. d. poundage granted to H. 4. in the thirteenth yeare of his raigne for a certaine time, in which Statute there is this clause, That this aide in time to come should not be taken an example to charge the Lords and Commons in manner of Subsidie, unlesse it be by the wills of the Lords and Commons, and that by a new grant to be made in full Parliament in time to come. This clause in good and proper construction may be taken to be a very convention betweene the King and his people in Parliament, that he should not from thenceforth, nor any of his Successors set on impositions without assent of Parliament. The like imposition was granted to H. 5. in the first yeare of his raigne for a short time towards the defence of the Realme, and safeguard of the Sea upon condition expressed in the act, that the Merchants Denizens, and estrangers comming into the Realme with their Merchandizes, should be well and honestly used and handled, paying the said Subsidie as in the time of his Father, and his noble Progenitors Kings of England without oppressi-  
Rot. parl. 1. H. 5. n. 17.  
 on, or extortion : In the end of which act the Commons protested, being bound by any grant in time to come, for the purposes aforesaid.

H. 6. in the one and thirtieth yeare of his raigne, had tunnage and poundage given him for his life. E. 4. had it given him the third yeare of his raigne, as it appeareth in a Statute 12. E. 4. cap. 3. H. 8. in the sixth yeare of his raigne, and all since in the first yeare of their raignes have had it given them for terme of their life, and being now so certainly settled in it, do reach further at that frō which they are in conscience and honour excluded by this voluntarie gratification : For can any man give me a reason, why the people should give this imposition of tunnage and poundage above the due custome upon all commodities, if the King by his prerogative might set on impositions without assent of Parliament ; and were not that a weak action in a King, to take that of his people as a benevolence  
Rot. parl. 31. H. 6.  
 12. E. 4. c. 3.  
 6. H. 8. c. 12.  
 1. E. 6. c. 13.  
 1. Ma. 6. 18.  
 1. E. 6. 19.  
 1. Jac. 1. 33.



from them, with limitation of the same, and in what it should be imployed, and how they will be used for it, and for what time he shall have it, which he might justly take without their consents, unclogged of these unpleasing incombrances.

1.1ac.c.33.

The Statute of tunnage and poundage made in our times that are altogether inclined to flattery, doe yet retaine in them certain shewes and rumors of those ancient liberties, although indeed the substance be lost, as in the Stat. 1.1ac. cap. 33. we declare that we trust, and have sure confidence of his Majesties good will towards us, in and for the keeping, and sure defending of the Seas, and that it will please his highnesse, that all Merchants, as well Denizens as Strangers comming into this Realme, be well and honestly intreated and demeaned for such things whereof Subsidie is granted, as they were in the time of the Kings Progenitors and Predecessors without oppression to them to be done. By this clause as it now continueth, the true intent of this Statute appeareth to be, that there ought no other imposition be laid upon Merchants besides these given by this Statute, and this intention hath been well interpreted by use and practise from the time of E. 3. to the time of Queene *Mary*, as before is declared.

Thus much of this last reason made from observation, and the action of our Nation. I will answer now such maine objections as have been made against the peoples right, and have not been touched by me *obiter* in my passage through this discourse.

That which hath been most insisted upon is this, that the King by his prerogative Royall hath the custodie of the Havens and Ports of this Island, being the very gates of this Kingdome; that he in his royall function and office is only trusted with the keyes of these gates; that he alone hath power to shut them, and to open them when, and to whom he in his Princely wisdom shall see good: that by the Law of England he may restraints the persons of any  
from

from going out of the Land, or from coming into it : That he may of his owne power and discretion prohibite exportation and importation of goods and merchandizes ; and out of this prerogative and preheminance , the power of imposing, as being derivative, doth arise and result, For *Cui quod maius est, licet, & ei quod est minus licitum est* : So their reason briefly is this, the King may restraine the passage of the person, and of the goods ; therefore he may suffer them not to passe, but *sub modo* ; paying such an imposition for his sufferance as he shall set upon them : for the grounds and propositions laid in this objection, I shall not be much against any one of them ; others of them must be qualified ere they be confessed ; but the inference and argument made upon them, I utterly deny ; for in it there is *mutatio hypothesis* , and a transition from a thing of one nature, to a thing of another ; As the premisses are of a power in the King only fiduciary, and in point of trust and government, the conclusion inferres a right of interest and gaine ; Admit the King hath *Custodiam portuum* , yet hee hath but the custody, which is trust, and not *Dominium utile* ; He hath power to open and shut upon consideration of publike good to the people and State, but not to make gaine and benefit by it : The one is protection, the other is exilation. The Ports in their owne nature are publike *Portus sunt Publici.* free for all, to goe in and out, yet for the common good, this liberty is restrainable by the wisdom and policy of the Prince, who is put in trust to discern the times when this naturall liberty shall be restrained. In *1. H. 7. fo. 10. c. H. 7. 10.* in the case of the Florentines for their Allome, the Lord chiefe Justice *Husse*, doth write a Case, that in the rime of *E. 4.* a Legate from the Pope being at Calice to come into England, it was resolved in full Councell (as the booke saith) before the Lords and Judges that he should not have licence to come into England unlesse he would take an oath at Calice, that he would bring nothing with him that should be prejudiciall to the King and his Crowne.

The

Fitzh. N. B.  
85. b.

The King by the Common Law may send his Writ, *Ne excus regnum* to any subject of the Realme, but the summe of the Writ is, *Quia datum est nobis intelligi, quod in versus partes exieras absq. licentia nostra clam destinat se diuertere, & quamplurima nobis & corone nostra preiudicia prosequi*, Fitzh. N. B. 85. b. So in point of government, and Common good of the Realme, he may reſtraine the person: but to conclude, therefore he may take money; not to reſtraine, is to ſell government, truſt, and common juſtice, and moſt unworthy the diuine office of a King. But let us compare this power of the King in forraigne affaires, with the like power he hath in Domestique government. There is no queſtion but that the King hath the cuſtodie of the gates of all the Townes and Cities in England, as well as all the Ports and Havens, and upon conſideration of the Weal publike may open and ſhut them at his pleaſure, As if the infection of the ſickneſſe be dangerous in places vicine to the City of London, the King may command that none from thoſe places ſhall come into the City: May he therefore ſet an impoſition upon thoſe that he ſuffereth to come into the City? So, if by reaſon of infection he forbid the bringing of Wares, and Merchandizes from ſome Cities or Townes in this Kingdome to any great Faire or Mart, Shall he therefore reſtraine the bringing of Goods thither unleſſe money be given him by way of impoſition?

2. E. 3. 7.

The King in his diſcretion in point of equity, and for qualifying the rigour of the Law, may enioyne any of his Subjects by his Chauncellor from ſuing in his Court of Common Law: May he therefore make a benefit by reſtraining all from ſuit in his Courts, unleſſe they pay him an impoſition upon their ſuits? In 2. E. 3. in the caſe of the Earle of Richmond before cited, the King had granted unto the men of great Yarmouth, that all the Ships that arrived at the Port of Yarmouth, which conſiſted of three ſeverall Ports, great Yarmouth, little Yarmouth, and Gerneſton ſhould arrive all at great Yarmouth, and at no other place



place within that Port. The lawfulness of this Patent being in question in the Kings Court, it was reasoned in the Kings behalfe for the upholding of the graunt, as it is now, that the King had the custodie of the Port, he might restrain Merchants from landing at all in his Kingdome : Therefore out of the same power might appoint where, and in what Haven they should land, and in no other ; This Patent was demurred on in the Kings Bench, as being granted against the Law, but the Case depending was adjourned into Parliament for the weight and consequence of it, and there the Patent was condemned, and a Law made against such, and the like graunts. *9.E.3.cap.1.*

The Presidents that were vouched for maintenance of this power of restraint in the King, were foure, produced almost in so many hundred yeares, whereof two were in the second yeare of *E. 1.* one in the tenth yeare of *E. 3.* *Rot. par. l. 2. E. 1. n. 16.* another in the seventeenth yeere of *H. 6.* since which *Rot. fin. 2. E. 1. n. 17.* time wee heare of none but by Act of Parliament, as they had beene usually and regularly before. To these I will *Rot. claus. 10. E. 3. dor. 31.* give answer, out of themselves, out of the common law, *Rot. claus. 17. H. 6. in dor.* out of divers statutes, and out of the practise of the Common-wealth. The restraint in the time of *E. 1.* the one of them was to forbid the carrying of wooll out of the Realme, the other was to forbid all Traffique with the Flemings. That of *10. E. 3.* was to restraine the exportation of ship-timber out of the Realme. That of *17. H. 6.* to prohibite Traffique with the subjects of the Duke of *Burgundy.* These presidents are rare, yet they have in them inducements out of publique respects to the Common-wealth ; for the rule of Common law in this case, I take it to bee as the reverend Judge Sir *Anthony Fitzherbert* holds it in his writ of *Ne exeat regnum in Na. Br.* *Fitzh. N. B. 85.* that by the Common law any man may goe out of the Kingdome, but the King may upon causes touching the good of the Common-wealth restraine any man from going by his Writ or Proclamation, and if hee then goe, it is

a contempt. This opinion of his is confirmed by the booke, 1. *Eliz. fol. 165. Dier. 12. & 13 Eliz. Dier. 296.*  
*Dier. 13. El. 296.* In like manner if a subject of *England* be beyond sea, and the King send to him to repaire home, if hee doe it not, his lands and goods shall bee seised for the contempt, and this was the case of *William de Brittain E. of Richmond, 19. E. 2.* Hee was sent by the King into *Gascoine* on a message, and refused to returne, for which contempt his goods, chattels, lands, and tenements were seised into the Kings hands: the Record is cited, 2. & 3. *Ph. & M. in my L. Dier. fol. 128. B.* and the law there held to bee so at that time upon a question moved in the *Queenes* behalfe against divers that being beyond the seas refused to returne upon commandment sent unto them to that purpose: the same is againe for law confirmed in the *Dutchesse of Suffolke, case 2. Eliz. Dier. 176.* but the Common law was altered in this point by the statute of 5. *R. 2. cap. 2.* by which the passage of all people is defended that they may not goe without licence except the Lords and other great men of the Realme, merchants, and souldiers: so for the merchants which are the people dealt withall in the businesse in hand, the Common law remaineth as it was before the statute, and so it was held, 12. *El. Dier. 196.* where the case was, An English merchant being a Papist went over sea, and being there, did settle himselfe to remaine there for enjoying the freedome of his conscience: it was moved here in *England*, that his going without licence should bee a contempt, because hee went not to traffique as a merchant, but for the cause of Religion: it was resolved, no such averment would be taken in this case, for that the very calling and vocation of being a merchant did give him liberty to goe out of the Kingdome when hee would, and therefore the secret intent of his going was not to bee enquired after, *Sed lex inspicit quod verisimilius.* Therefore it was in this case held no contempt, but at this day the law is as it was before

before, 5. R.2 cap 2. for that statute is repealed 4. Lac. 4. Lac. cap. 1. And all men whatsoever are now at liberty by the Common law to passe out of the Realme. There is onely against this inconvenient liberty a Proclamation dated at Westminster. 9. Jul. 5. Lac. To the very same effect in point of restraint of passage with the statute of R. 2. So the subject is in this much the more at ease and liberty than he was before: that his going over sea without licence doth not induce any forfeiture, but onely incurreth the censure of a contempt, and therefore it were to bee wished that some firme law might bee made in the case both for the execution of so good a point of policy, and for the more quiet of the State, in knowing the certainty of the punishment for the offence.

This liberty and freedom of merchants hath been strengthened and confirmed by many notable lawes before recited, as 14. E. 2. ft. 2. c. 2. 15. E. 3. ft. 2. c. 5. 18. E. 3. ft. 1. c. 3. and divers other, and therefore though it bee admitted that the King may restraine persons and goods, yet it may well bee denied, that he hath power of himself alone without assent of Parliament simply and indefinitely to restraine all trafique in generall, or to shut up all the havens and ports, and to barre the vent and issuing of wares and merchandises of the whole Kingdome, as appeareth plainly that this hath been done this three hundred yeers or near thereabouts by Act of Parliament onely, and that the Kingdome of England made this matter of Trafique so tender a case to deale in, as that it hath ever held it a matter fit for the consultation of the great Councell of the Kingdome, and for no other.

In 11. E. 3. the exportation of wools was prohibited by Act of Parliament, in which statute there was this clause, untill that by the King and his Councell it bee thereof otherwise provided: which power so given to the King to be used for the good of the Common-wealth gave occasion to him to abuse it to his profit and commodity by giving licences of transportation to all that would give



13.E.3.R.Thes.  
vol.2.

fourty shillings upon a sacke of wooll above the due C-  
stone. This appeareth in the Records in the Exchequer,  
I will describe the Record that  
you may perceive the grant of it the better, Rex coll-  
ectoribus Cusuma in portu magna lermouth salutem. Quia con-  
cessimus dilecto & fidei nostro Hugoni de Wriothsley, quod ipse  
viginti & septem saccos lana & dimid. de lana suis propriis in  
portu predicto cariare & eas usq. Antwerpe ad stapulam nostram  
ibidem ducere possit, solvendo ibidem dilecto clerico nostro Wil-  
lielmo de Northwell custodi guardaroba nostra 40.s. pro quoli-  
bet sacco pro custuma & subsidio inde nobis debitis, &c. vobis  
mandamus quod predict. Hugon. dictos viginti septem saccos  
lana & dimid. in portu predicto cariare permittatis, &c. And  
another the same yeere. Rex collectoribus custuma, &c.  
Cum nuper ordinaverimus quod passagium lanarum, &c. aper-  
tum existeret, & quod sigillum nostrum quod dicitur Coker,  
quod prius claudi & sub ferra custodiri mandavimus ape-  
riri, & apertum teneretur, ideo vobis mandavimus quod si-  
gillum predictum in portu predicto aperiri, & apertum teneri  
faciatis, & omnes illos qui huiusmodi lanas cariare & ducere  
velint permittatis, receptis prius ab iisdem. viz. de mercatoribus  
& aliis indigenis 40.s. de quolibet sacco lana. Divers other  
such sales of traffique occasioned by this parliamentary  
restraint were made betweene 11.E.3. that the restraint  
was made, and 14.E.3. that this inconvenience being  
espied, the sea was opened by statute, and the restraint re-  
moved 14.E.3. stat.2. cap.2. 15.E.3. cap.5. stat.2. And  
this fourty shillings so exacted was complained of, as an  
imposition in Parliament, and the occasion and the effect  
were both taken away together by Act of Parliament,

11.E.3. vol.  
12.R. Thes.

14.E.3. stat.2. cap.2.  
15.E.3. cap.5. stat.2.

14.E.3. cap.21.  
stat.1.  
stat.2. cap.1.

5.R.2. cap.2. stat.2.

14.E.3. stat.1. cap.21. & stat.2. cap.1.

It followed in all Kings times sithence the death of E.3.  
that this opening and shutting of the havens, restraining  
and enlarging of traffique was done by Act of Parliament.  
I will give one instance in the Raigne of every King,  
5.R.2. cap.2. stat.2. For the passage of wooll, wool-fells, and  
leather,

leather, 6. *H.4. cap.4.* For the traffique and commerce 6. *H.4. c.4.*  
 with merchants aliens, 2. *H.5. cap.6. stat.2.* For the re- 2. *H.5. c.6. stat.2.*  
 straint of staple commodities to places certaine, and for  
 the traffique of the merchants of the west, 27. *H.6. cap.1.* 27. *H.6. cap.1.*  
 that is enacted in Parliament which is contained in the  
 Proclamation, 17. *H.6.* cited for a president, that is, be-  
 cause the Duke of *Burgundy* made an ordinance whereby  
 the traffique of the English Nation was restrained, that  
 therefore the Englishmen should not traffique with the  
 subjects of the Duke of *Burgundy*. The same thing enacted  
 upon the like occasion 4. *E.4. c.1. 19. H.7. c.21.* the importa- 4. *E.4. cap.1.* 19. *H.7. cap.21.*  
 tion of divers commodities forbidden as being prejudiciall  
 to the manufactures within the Realme. 6. *H.8. cap.12.* 6. *H.8. cap.12.*  
 The exportation of *Norfolk* woolls out of the Realme  
 forbidden. 26. *H.8. cap.10.* Power is given to the King 26. *H.8. c.10.*  
 to order and dispose of the traffique of merchants at his  
 pleasure, and the reason is given, because otherwise the  
 leagues and amities with forreigne Princes might bee im-  
 peached by reason of restraint made by divers statutes  
 then standing on foote, whereby it appeareth that it was  
 not then taken to bee law, that the King had an absolute  
 power in himselfe to order and dispose of the course of  
 traffique without helpe of a statute. 2. *E.6. cap.9.* Ex- 2. *E.6. cap.9.*  
 portation of leather restrained: 1. & 2. *Ph. & Ma.* The 1. & 2. *P. &*  
 exportation of herring, butter, cheefe, and other victuals *M. c.5.*  
 forbidden. 18. *Eliza. cap.8.* the exportation of tallow, 18. *El. cap.8.*  
 raw hides, leather. So in all times no use of Proclamati-  
 ons in matters of this nature, but Acts of Parliament still  
 procured: wherefore in mine opinion it behoveth them  
 that doe so earnestly urge this argument, (the King may  
 restraime traffique, therefore may impose,) to prove better  
 then they have done, that the King may restraime traffique  
 of his owne absolute power: for as the naturall policy  
 and constitution of our Common-wealth is; wee may  
 better say, that is law which is *de more gentis*, then that  
 which floweth from the reason of any man guided by his

generall notion and apprehension of power regall *in genere. not in individuo.*

The last assault made against this right of the Kingdome was an objection grounded upon policy, and matter of State, as that it may so fall out that an imposition may be set by a forreigne Prince that may wring our people, in which case the counterpoise is, to set on the like here upon the subjects of that Prince, which policy if it be not speedily executed, but stayed untill a Parliament, may in the meane time prove vaine and idle, and much damage may bee sustained that cannot afterwards be remedied.

This straine of policy maketh nothing to the point of right; our rule is in this plaine Common-wealth of ours, *Oportet neminem esse sapientiores legibus*: if there bee an inconvenience, it is fitter to have it removed by a lawfull meanes, than by an unlawfull: but this is rather a mischief than an inconvenience, that is a prejudice in present to some few, but not hurtfull to the Common-wealth: and it is more tolerable to suffer an hurt to some few for a short time, than to give way to the breach and violation of the right of the whole Nation: for that is the true inconvenience, neither need it bee so difficult or tedious to have the consent of the Parliament, if they were held as they ought, or might be; but our surest guide in this will bee the example of our ancestours in this very case, and that in the time of one of the most politique Princes that ever reigned in this Kingdome. 7. H. 7. cap. 7. You shall finde an Act of Parliament, in which it was recited that the Venetians had set upon the English merchants that laded Malmeseyes at Candy foure duckets of gold upon a But, which in sterling was eightene shillings the But. It was therefore enacted that every merchant stranger that brought Malmesey into this Kingdome should pay eightene shillings the But over and above the due Custome used, this imposition to indure untill they of Venice had set aside that of foure duckats the But upon the Englishmen.

Much



Much hath beene learnedly uttered upon this argument in the maintenance of the peoples right, and in answering that which hath beene pressed on the contrary, but my meaning is not to expresse in this discourse all that hath or may bee said on either side, but onely to make a remembrance somewhat larger of that which I my selfe offered as my *symbolum* towards the making up of this great reckoning of the Common-wealth, which if it bee not well audited, may in time cost the subjects of *England* very deare. My hope is of others that laboured very worthily in this businesse, that they will not suffer their paines to die, and therefore I have forborne to enter into their province. I will end with that saying of that true and honest Counsellour *Philip Comines* in his 5th. booke the 18. chap.

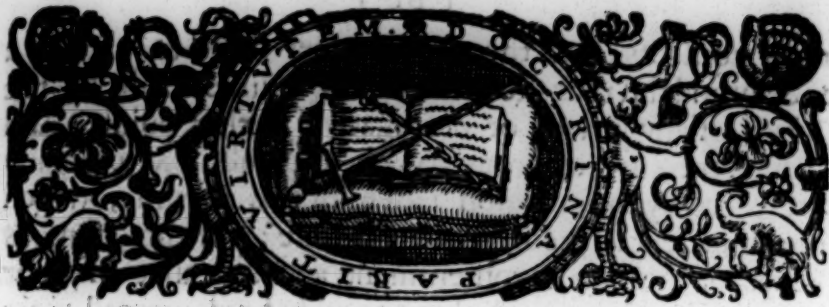
*That it is more honourable for a King to say, I have so faith- Ph. Comines  
full and obedient subjects, that they deny me nothing I demand, l. 5. c. 18.  
than to say, I levie what me list, and I have priviledges so  
to doe.*

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*After*

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[illegible]



*After the Kings right to impose had beene thorowly examined in Parliament, and there determined not to be in him alone, without assent of Parliament, among other Petitions of grievance given unto his Majestie, this hereafter was concerning impositions.*

**T**HE policie and constitution of this your Majesties kingdome appropriates unto the Kings of this Realme, with assent of Parliament, as well the soveraigne power of making Lawes, as that of taxing or imposing upon the subjects goods or merchandizes, wherein they justly have such a propriety, as may not without their consent be altered or changed : This is the cause that the people of this kingdome, as they have ever shewed themselves faithfull and loving to their Kings, and ready to aide them in all their just occasions, with voluntary contributions : so have they been ever carefull to preserve their owne liberties and rights when any thing hath been done to prejudice or impeach the same : And therefore when their Princes, either occasioned by war, or by their over great bounty, or by any other necessity, have without consent of Parliament set on impositions either within the Land, or upon commodities exported or imported by the Merchants, they have in open Parliament complained of it, in that it was done without  
K their



their contents, and thereupon never failed to obtain a speedy and full redresse without any claime made by the Kings, of any power or prerogative in that point. And though the Law of propriety be originall and carefully preserved by the common Lawes of this Realme, which are as ancient as the Kingdome it selfe, yet those famous Kings for the better consentment and assurance of their loving subjects agreed that this olde fundamentall right should be further declared and established by act of Parliament, wherein it is provided that no such charge should ever be laid upon the people without their common consents, as may appeare by sundry Records of former times.

We therefore your Majesties most humble Commons assembled in Parliament, following the example of this worthy care of our anceltors, and out of our duty to those for whom we serve, finding that your Majestie without advice and consent of your Lords and Commons, hath lately in time of peace set both greater impositions, and farre more in number then any your noble anceltors did ever in time of Warre, doe with all humility present this most just and necessary petition unto your Majestie, that all impositions set without assent of Parliament, may be quite abolished and taken away. And that your Majestie likewise in imitation of your royall progenitors will be pleased, that a Law in your time, and during this Session of Parliament may be also made to declare that all impositions of any kinde set, or to be set upon your people, their goods or merchandizes, save only by common consent in Parliament are, and shall be voide : Wherein your Majesty shall not only give your subjects great satisfaction in point of their right, but also bring exceeding joy and comfort to them who now suffer, partly through the abating of the price of native commodities, and partly through the raising of all forraigne, to the overthrow of Merchants and Shipping, the causing of a generall dearth, and decay of all wealth among your people, who will be thereby no lesse discouraged then disabled to supply your Majestie when occasion shall require.

**FINIS.**

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20. Maii, 1641.

**A** *T*a Committee appointed by the honourable House of Commons, for examination of Bookes, and of the licencing and suppressing of them, &c.

*It is ordered that this Treatise be published in Print, unlesse the Licencer shall shew good cause to the contrary,*

EDVVAR DERING.

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A Committee appointed by the House of Commons, for examining and reporting upon the evidence taken before them, &c.

in fact, with the intention that those who  
are in the contrary.

EDWARD D. LIVINGE



